IN THE

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. 254

THE UNITED STATES OF AMERICA,
Appellant,

vs.

INTERNATIONAL HARVESTER COMPANY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

APPENDIX TO APPELLEES' BRIEF.

FRANK H. SCOTT,
WILLIAM S. ELLIOTT,
VICTOR A. REMY,
Solicitors for Appellees.

JUDD & DETWEILER, INC., PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 192[illegible].

No. 843

THE UNITED STATES OF AMERICA,
Appellant,

vs.

INTERNATIONAL HARVESTER COMPANY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

APPENDIX TO BRIEF.

APPENDIX TO PART I.

THE GOVERNMENT'S CHARGE THAT THE NUMBER OF COMPETITORS IN HARVESTING MACHINERY IS STEADILY DIMINISHING DUE TO INABILITY TO COMPETE WITH THE INTERNATIONAL HARVESTER COMPANY WAS AFFIRMATIVELY DISPROVED—COMPARISON OF COMPANIES COMPETING IN 1911 AND 1923.

The following are the principal competitors of the Harvester Company in binders, mowers and sulky hay rakes:

*Name	Capital	Number of Branch Houses or Transfer Houses	Number of Dealers
1. Deere & Co.	$71,105,808	42	7,370 to 10,000
2. Moline Plow Co.	32,715,313	24	Not in record
3. Massey Harris Co.	31,700,000	8	1,807
4. Emerson Brantingham Company	18,492,868	21	2,500
5. Avery & Sons	6,558,516	15	1,194
6. Minnesota State Prison			1,056

The figures headed "Capital" include capital stock issued, bonds and debentures outstanding, and surplus, except in the case of Massey-Harris Co., where the figure given is the capital stock and surplus only (R. 256), the bonds and debentures, if any, not being in evidence. The financial comparison with 1911 companies on page 41 of our brief is made on the basis of capital stock only as the record does not contain the 1911 balance sheets of companies then competing.

The figures as to dealers are incomplete as to the Massey-Harris Harvester Company and Avery & Sons, who do a considerable portion of their business through jobbers, and the number of dealers above stated as handling their harvester lines does not include the dealers to whom these jobbers sell. (R. 256, 258, 86, 87, 517).

* (Deere) Capital—see Pet. Exh. (8) 51 (R. 463); Branch Houses (R. 463 and 239); Dealers (R. 524 and R. 120).

(Moline) Capital—see Pet. Exh. (8) 40 (R. 453-455); Branch Houses (R. 453).

(Massey H.) Capital—Branch Houses (R. 425); Dealers (R. 425).

(Emerson B.) Capital—see Pet. Exh. (8) 12 (R. 405, 406); Branch Houses (R. 405); Dealers (R. 513-515).

(Avery) Capital—see Pet. Exh. (8) 26 (R. 429-431); Branch Houses (R. 428); Dealers (R. 515-518).

(Minnesota) Dealers (R. 495).

Additional Competitors.

Mowers	Sulky Hay Rakes
1. Thomas Mfg. Co.	1. Thomas Mfg. Co.
2. Sears Roebuck & Co.	2. Charles G. Allen Co.*
3. Detroit Harvester Co.	3. Ohio Rake Co.†
4. Roderick Lean & Co.	4. Sears Roebuck & Co.
5. Montgomery Ward & Co.	5. Montgomery Ward & Co.
6. Messinger Co. ‡	6. Messinger Co.‡

1. Thomas Co. has resources of $818,549.12—sells to 321 dealers (R. 459, 460).

2. Sears Roebuck & Co. is the largest mail order house in the world and sells mowers and rakes (R. 100-102).

3. Detroit Harvester Co. makes a mower for use with Ford tractor (R. 276-279).

4. Roderick Lean Co. makes a mower for use with Ford tractor (see Defts.' Exh. (8) 8, pp. 37, 42 and 43 thereof—certified as original exhibit.

5. The Government introduced no evidence as to the business of Montgomery Ward & Co. The evidence in the former proceeding showed they made mowers and rakes (U. R. II. 1105, 1108) and the evidence in this proceeding proves that they are in the agricultural implement business (R. 308).

Of the principal competitors listed (*supra*, p. 2) the following make side-delivery rakes (R. 462, 527, 421):

Deere & Co.,
Emerson-Brantingham Co.,
Massey Harris Co. and
Avery & Sons.

There are in addition the following who make side delivery rakes:

Thomas Mfg. Co. (Petitioner's Exhibit (8) 49, R. 460-462)
Ohio Rake Co. (Petitioner's Exhibit (8) 46, R. 458, 494).
Rock Island Plow Co. (R. 333, 494)

The following competitors the evidence shows make and sell sweep rakes:

Deere & Co. (R. 290)
Dempster Mfg. Co. (R. 290)
Jenkins Rake Co. (R. 273)
Fleming Mfg. Co. (R. 272)
Collins Plow Co. (R. 273)
Superior Mfg. Co. (R. 273)
Ohio Rake Co. (Petitioner's Exhibit (8) 46; R. 458, "Revolving wood rakes.")

*For business of the Allen Co. see R. 128, 129.

†For business of the Ohio Rake Co. see R. 113, 114, 457, 458.

‡For business of the Messinger Co. see R. 164, 165, 499-501.

Similarly, while harvester-threshers were not made in 1902 and only by one company in 1912 when the former proceeding was instituted, the evidence here shows that in large portions of the country harvester-threshers are displacing binders. The Harvester Company has the following competitors in harvester-threshers:

Holt Mfg. Co. (R. 529).
Massey-Harris Company (R. 530).
Case Company (R. 529).
Harris Mfg. Co. (R. 530).
Advance Rumely Co. (R. 529).

Inasmuch as the Government mentioned tedders and combined rakes and tedders in its supplemental petition (tables for 1921 and 1922, R. 21 and 22) and introduced some, but very incomplete, evidence of the sales of said implements, we show here the competitors of the Harvester Company in said lines, in so far as disclosed by the record:

1. Deere & Co.—(Petitioner's Exh. (8) 53; R. 466).
2. Emerson-Brantingham Co.—(R. 83).
3. Massey-Harris Co.—(R. 421. Petitioner's Exh. (8) 20; R. 427).
4. Avery & Sons—(Petitioner's Exhibit (8) 25; R. 429).
5. Thomas Mfg. Co.—(Petitioner's Exhibit (8) 49; R. 460-462).
6. Ohio Rake Co.—(Petitioner's Exhibit (8) 40; R. 458).
7. Messinger Mfg. Co.—(R. 164).

Deere & Company in 1911 sold 10 grain binders in the United States; in 1912 it sold 931; while in 1919 it sold 17,222, in 1920 it sold 16,399 and in 1923 it sold 5,245 (O. R. Vol. II, 1167; Petitioner's Exhibit (8) 50; R. 462). In common with all other companies its sales fell off during the farm depression, which extended from the fall of 1920 until the end of 1923, but no more so relatively than did the sales of the Harvester Company. The Harvester Company sold 98,077 grain binders in 1919 and 30,161 in 1923. Moreover, in 1911, Deere & Company made no corn binders (R. 20).

It sold 4,799 in 1919; 5,697 in 1920 and 2,716 in 1923 (R. 462). In 1911 Deere & Co. jobbed Dain mowers and side delivery rakes. Since then, it has built its own mowers, side delivery rakes, sulky hay rakes and sweep rakes (R. 119, 260, 462).

Similarly, in 1911, the Minnesota State Prison was just starting in the harvesting machine business. In 1911, it sold 685 grain binders, 958 mowers and 23 rakes (R. 20). In 1919, the Minnesota Prison sold 4,420 binders, 4,429 mowers and 2,823 rakes; in 1923, it sold 2,193 binders, 3,581 mowers and 1,798 rakes (R. 496).

It will be seen from the foregoing Deere & Company and the Minnesota State Prison are practically new competitors in harvesting machines since the original petition for dissolution was filed in 1912.

In 1911 the only harvesting machines which the Emerson-Brantingham Company made were mowers and rakes (O. R. Vol. I, 352). By the purchase of the Osborne line it has entered the grain binder and corn binder field and acquired another line of mowers and rakes. In addition it now makes side delivery rakes, tedders and combined rakes and tedders (R. 405, 81).

APPENDIX TO PART II.

THE CHARGE THAT THE HARVESTER COMPANY HAS SOLD AT COST TO ELIMINATE COMPETITION WAS DISPROVED.

1. THE EFFECTS OF THE FARM DEPRESSION.

The income of the farmers of the United States was $14,000,000,000 from July 1, 1919 to July 1, 1920; $10,500,000,000 from July 1, 1920 to July 1, 1921; $7,500,000,000 from July 1, 1921 to July 1, 1922 (R. 334).

The effects of the farm depression were reflected by the manner in which deposits of country banks were withdrawn from their city correspondents of which, for purposes of illustration, there are five instances in the record (R. 360, 356, 358, 361, 363):

	Country Bank Deposits in 1920	Country Bank Deposits in 1921
Omaha National Bank	$16,000,000 to $17,000,000	$6,000,000
First National of Wichita, Kan.	8,000,000	4,500,000
American National of St. Joseph, Mo.	6,000,000 to $ 7,000,000	1,750,000
First National of Minneapolis	30,000,000	15,000,000
Aberdeen National Bank of South Dakota	4,000,000	2,000,000

On the other hand, the borrowings of country banks largely increased (R. 356-363). As a result, banks discouraged purchases of implements and in many instances would not handle dealers' or farmers' notes made for the purpose of buying such implements, as they were considered capital rather than liquid loans (R. 358, 360). In spite of all precautions, there were a large number of bank failures, particularly in the Northwest (R. 361).

The plight of the farmers in 1921 and 1922 was every-

where recognized as serious and as a matter of vital national importance—the War Finance Corporation was re-created in order to aid the farmer, and there was legislation enabling Joint Land Banks to be formed in order to loan money to farmers, and sell bonds secured by farm lands (R. 335). Congress appointed a Joint Committee to report on "The Agricultural Crisis and Its Causes."

Though, as the Court will recall, there was widespread industrial depression during all of 1921 and most of 1922, yet neither the prices of manufactured goods nor the prices of labor fell to a degree at all commensurate to the prices of agricultural products. The vital distinction between the depression which existed in 1921 and 1922 (and, to some extent, in 1923), as compared to prior depressions and panics, was in the disparity between the prices of the goods the farmers purchased and of the products they sold (R. 335, 341, 342, 348).

The disparity between what the farmers paid for manufactured goods and what they received for their products incensed them (R. 335, 342, 348). *Mr. Witten*, President of the National Federation of Implement Dealers, in describing this, said:

> "The farmers had made arrangements, contracted bills, bought land and made improvements when prices were good and things were looking good and when the bottom dropped out of his farm prices you could see the condition naturally that fellow would be left in. And then when 1921 came he became almost an anarchist. I live in as good a community as there is under Heaven and I have never done business in such conditions as I have the last three years. The farmer when he had to buy a tool did it resistently and almost insulted you when he gave you the check for it—men you have known all your life, men who had traded with you for 25 years." (R. 294.)

For a time implement sales were at a standstill. The advance orders for 1921 taken by the Harvester Company were the largest in the history of the Company (R. 173). But these orders were, in a very large measure, canceled prior to the first of the year (R. 173). How unusual such a condition was is shown by the following tabulation, based upon Defendants' Exhibit (S) 22, (R. 604), comprising the number of orders taken for machines prior to January first for the seasons of 1918, 1919, 1920 and 1921, and the number of machines delivered during each of said seasons.

	1918	1919	1920	1921
Machines ordered up to January 1st	390,947	240,570	614,922	939,776
Deliveries made during the season	691,297	723,777	923,259	374,694

Thus the number of machines canceled for the 1921 season came to 295,082, representing at the prices prevailing in December 1920—$46,768,918. The number of machines canceled for the 1918 season was 438, for the 1920 season 1,035, and none were canceled for the 1919 season (Defts' Exh. (S) 22; R. 604).

Similar conditions were experienced by other companies (See Oliver—R. 251; Brantingham—R. 83; White—R. 85, 86; Taylor—R. 88, 90; McLean—R. 92; Stambaugh—R. 102; Peek—R. 103, 104, 109; Graves—R. 114; Thomas—115; Silloway—R. 117, 118; Nash—R. 124; Messinger—R. 165; Stone—R. 164; McMillan—R. 160, 161).

Testimony of Joseph Oliver as to the Necessity for the Price Reductions.

Mr. Oliver explained the reasons for the price reductions of the Oliver Chilled Plow Works, the first company to reduce its prices (Jan. 10, 1921), as follows:

"The last three years in the implement industry

have not been normal years; far from it. They have been the most disastrous years in the agricultural implement line of any which our institution has passed through, which covers nearly seventy years. In my experience I do not recall in the history of the company any comparable period; and that is about a lifetime. The deflation in farm products has been so tremendous that the farmers' buying power was almost entirely eliminated; in fact, he was not in a position to buy the tools that he really required for his operations on the farm during the past three years. In 1920, we had heavy orders and the trade was quite lively. We had a very large inventory made of high-priced material at high cost. Now, in that affair there, we sustained a very serious loss, as all of our competitors did. There was no way of avoiding it. We had these orders from our customers, but if we had insisted on their accepting the goods we would have broke many of the very best connections we had, and we did not require anybody to accept the goods. On the contrary, they were canceled, and they remained canceled; and a year and a half passed before they came in to buy goods and when they did, they bought them at very much less than cost, so much so that we sustained a loss that ran into millions. We were not forced financially to realize on our inventory, but we felt it was advisable. As far as finance is concerned, my family—we financed our own institution and we are amply able to do that. That did not bother us at all; it did not enter into our problem as we looked it over. But this was the thing for us to decide. Our representatives could not take those goods so far as we could see and pay for them. It was a question whether we would take the loss or insist on their taking the goods so far as we could force them to do it, and we did not feel inclined to do it. We accepted the loss ourselves at the time. We knew we were amply able to do it and it was the wise thing for us to do. That decision was not the result of lack of financial freedom on the part of our company.

"Our company was one of the first to reduce prices for 1921. Our big reduction came in January,

1921. I think there was a reduction in the fall of 1920, but I am not positive about that. The policy we adopted when confronted with this collapse in the farmers' buying power was with a view of meeting the farmer in his extremity and carrying what we felt was a reasonable part of the load ourselves. We knew it was a serious loss, but we knew he could not bear it all, and we took a big share of it ourselves. That was our reasoning and I have never regretted the course that we pursued. I think it was wise. I felt that something of the kind was necessary. I just had in mind in an old settled state like Ohio, to see farmers fail, not only one but twenty, why you know it is a thing that never was heard of in the history of the United States. As to the business necessity of the implement industry having to meet this crisis by lower prices and liquidation of high-cost inventories, I do not see how there was any other way out. Many of our competitors were in a position where they really required cash to meet pressing obligations. I think there were some quite serious sacrifices made from necessity." (R. 251, 252.)

NO COMPETITOR WAS ELIMINATED BY THE HARVESTER COMPANY'S REDUCTION OF PRICES ON HARVESTING MACHINES IN 1921 OR 1922 OR BY REASON OF ANY OTHER ACT OF THE HARVESTER COMPANY OR BY REASON OF ANY IMPOSSIBLE OR UNUSUAL COMPETITIVE CONDITIONS CREATED BY THE HARVESTER COMPANY

Of the companies which abandoned the harvesting machine business, the Adriance Platt sold its business in 1913 to the Moline Co. (R. 103); the Massey Harris purchased the Johnston Company twelve years ago (R. 85); the decision to liquidate the Acme Company was made in 1919 (R. 99); the Independent Harvester Company was in a Receiver's hands as early as 1917 and its plant was sold in 1920 (R. 94); the Bateman, Richardson and Belcher Taylor Companies consolidated with certain other companies (not manufacturers

of harvesting machines) and the consolidated company was in the hands of a creditors' committee in March 1921, over a month prior to the first price reduction of the Harvester Company on harvesting machines (R. 125); the Seiberling Miller Company went out of business in 1917 (R. 127); the Eureka Mower Company ceased making or selling mowers at the end of 1919 (R. 126); the Plattner Implement Company stopped making mowers in 1915 and had ceased the manufacture of sweep rakes, its only other harvesting machine, at the end of 1920 (R. 163). Thus all the companies, except the Wood, had either ceased making harvesting machines, or had decided to liquidate, or were in the hands of their creditors before the Harvester Company made any price reductions or sold at what later turned out to be at or below cost. The evidence in the case of the Wood Company affirmatively showed that the cause of that company's financial troubles lay in the fact that 65% of its business was in the foreign trade, a greater part of which was destroyed at the commencement of the World War in 1914 (R. 93).

In the Brief and Argument the reasons are given which led to the discontinuance of the manufacture of harvesting machines by the Acme, Wood, Adriance-Platt and Johnston companies. In the succeeding pages the causes for the abandonment of the harvester field by all the other companies which have discontinued their harvesting machine lines are stated.

The Independent Harvester Company of Plano, Illinois. The capital stock of this company in 1913 was $10,000,000. $1,000,000 was in common stock and the balance in preferred machinery discount stock having no vote but entitling the holder to an undisclosed discount if he bought agricultural implements from the company.

Six or seven million dollars par value worth of that stock had been sold to farmers who by 1913 numbered some 27,000 of its stockholders. The stock salesmen had received a commission of from 10 to 25% (R. 94, 95).

In February, 1913 an investigation was made as to the methods of the Independent Harvester Company. Mr. Thompson, the then president, later was indicted for fraud by a Federal grand jury, tried and acquitted. In 1917 receivers were appointed who in May, 1920, sold its plant at Plano, Illinois, to a Milwaukee syndicate, who operated the plant until about January or February, 1921, through a Delaware corporation which they formed. Mr. Steward, its former president, succeeding Thompson, and afterwards one of the receivers, then bought the stock of this Delaware corporation and formed an Illinois company. The manufacture of machines was stopped. The plant and its equipment was sold to the Moline Plow Company. The Illinois company makes only a few repairs in a space leased from the Moline Plow Company (R. 94 97).

Mr. Steward said:

> "The difficulties which occasioned the appointment of a receiver were not caused by any unfair competition of the International Harvester Company or of any other competitor. When I was operating the concern as receiver I had no cause to complain of our treatment in the field. * * *
>
> "Our chief difficulty in the field was obtaining a class of dealers who were financially responsible and comparatively permanently established. They did not care to handle a line that might be discontinued or concerning which there was some question. The greatest number of our stockholders were in the territory where our sales might be the largest. Those stockholders were naturally disappointed and hurt; and on the one hand a dealer in a given community might find in his territory ten to twenty farmers anxious to assist the company, and an antagonistic group who still felt they had been injured." (R. 96)

The Bateman and Companies Incorporated of Grenloch, New Jersey. The evidence shows that this concern was a consolidation, made in May or June, 1920, of the *Bateman Mfg. Co.*, the *Richardson Mfg. Co.*, the *Belcher-Taylor Company* and three other companies (R. 123). A very small percentage of the Bateman Companies' business consisted in sales of harvester lines and these sales were largely in New England, New York, Pennsylvania and New Jersey. The company went into a receivership in March, 1923, and is being liquidated. Some of its plants have been sold and none are now making harvesting machines (R. 123, 124).

Mr. Duane Nash, the sales manager of the Bateman Companies, identified a letter sent out by a creditors' committee on March 12, 1921, stating that the financial difficulties of the company were due to an inability to procure in 1920 certain additional working capital, to the heavy and unbalanced inventory consisting principally of steel and iron, and to the necessity of reducing loans. He said that there was at that time no plan to discontinue the harvester lines; that what led to their discontinuance was the same causes that led to the discontinuance of most of the other lines—the slump in the sale of agricultural implements which commenced in 1920 continued into 1922; that the disappearance of these companies from the trade, so far as it has taken place, was due to what, in the light of after events, appears to have been a rather ambitious scheme of consolidation requiring considerable financing and attempted on the brink of a calamity hitting the implement business (R. 124-126).

The Seiberling Miller Company of Doylestown, Ohio. The record in the former proceeding shows that this company was formed in 1901 to carry on a business which had existed since 1863. It manufactured binders, reapers and mowers, selling them mostly in Ohio and Wisconsin, with some export business. Its average sales, including those exported — approximately 25% — were from 75 to 100 binders, 50 reapers and 200 to 300 mowers a year. (O. R. Vol. II, 1133, 1134).

In the present proceeding the Government called *William R. Miller*, the son of Samuel Miller. He testified that Mr. Seiberling died in 1916; that the company was dissolved in 1917 and had not manufactured since then; that his father died in 1922 in his eighty-fourth year; the sons did not care to proceed with the business, being engaged in other enterprises (R. 127, 128.)

The Eureka Mower Company of Utica, New York. The evidence in the former proceeding shows that in 1912 this Company made potato, corn and bean planters, weeders and seeders, hardware specialties, and a few center draft mowers—the cutting bar being in the center instead of at the side as is the usual case; that from 1902-1911 it sold anywhere from two to fifty-four mowers a year (O. R. Vol I, 532).

The record in this proceeding shows that the company's largest lines are potato machines, corn planters, fertilizer distributors and harrows. It ceased making mowers at the end of 1919, in which year it sold 16. *Mr. Newcomer*, the president of the company, testified that the decision to abandon the manufacture and sale of mowers was not because of any unfair competition, but because its mower was of a type which the present generation never has used, to any extent, and which cost

more to make than the type now used; that the mower business had not been a factor in the trade of the Eureka Mower Company for at least 15 years prior to 1919 (R. 126, 127).

The Plattner Implement Company of Denver, Colorado. This concern, as the record in the former proceeding shows, was first a jobber. Subsequent to 1903 it commenced manufacturing mowers, sweep rakes and stackers, and by 1912 it was manufacturing and selling 587 mowers, 303 stackers and 550 sweep rakes. It also made pumps and water tanks. The intermountain freight rates operated to its disadvantage at Denver because of the rates on its raw materials from the East. Its sales were practically all west of Denver. (O. R. Vol. I, 418, 419.) In 1915 a Mr. Yale of Lincoln, Nebraska, became interested in the firm and the Plattner-Yale Company was formed, the business was removed to Lincoln, Nebraska, and the manufacture of mowers was abandoned. In 1919 the name was changed to the Yale and Hopewell Company. This company made sweep rakes, stackers, pumps, windmills, cylinders, valves and pump jacks and a general supply of water tools. In 1919 it sold 94 stackers and 191 rakes; in 1920, 284 stackers and 468 rakes; in 1921, 2 stackers and 40 rakes (R. 497). The company had ceased manufacturing at the end of 1920 and a trustee in bankruptcy was appointed in 1923 who sold the plants in May of that year. The failure was caused by a lack of business catching the company after it had prepared to do a large volume which fell off rapidly in the fall of 1920 (R. 162-164).

APPENDIX TO PART III.

AS TO THE EFFECT OF THE PROVISION OF THE DECREE LIMITING THE HARVESTER COMPANY TO A SINGLE DEALER IN A TOWN.

THE LOSS OF DEALERS TO THE HARVESTER COMPANY.

Mr. McKinstry, the Vice President of the Harvester Company in charge of sales, testified that under the decree of 1918 the Harvester Company discontinued 4,778 dealers who, during the last year in which they did business for the Harvester Company, sold $17,377,246.02 worth of goods. Of these dealers approximately 50% took up the sale of competing lines of harvesting machinery (R. 172, 175).

This loss of dealers to the Harvester Company came after a steady and material loss through other causes. Petitioner's Exhibit (8) 2 (R. 391-395) shows that the Harvester Company had 30,110 dealers handling its harvesting machines in 1914 and 17,007 in 1918 prior to the decree.

The reasons for the loss of these dealers prior to 1918 were fully shown by the evidence. About half of these dealers were lost through the increased competition that resulted from Deere & Co., the Massey Harris Co. and the Moline Company entering the harvester field in the United States, and the other half were lost by reason of the change in the manner of doing business from a commission agency to a straight sales contract (R. 183, 184, 211, 212).*

*Mr. Legge testified:

"Regarding the change from the commission contract to sale contract basis, the old system was the commission contract in which the dealer signed an agreement to receive the goods, pay the freight and for such sales as he made to receive a commission; the stock on hand remained the property of the Company at all

The dealers who handled the products of the Harvester Company in 1918 were men whom competitors had been unable to take away from the Harvester Company; in addition, they were dealers of good credit standing and, as Mr. Legge said, "they were experienced people in the implement business" (R. 190). The loss by reason of the 1918 decree of 4,778 dealers—who formed part of the residue of the 17,000 the Harvester Company had succeeded in retaining—clearly was a severe blow. It amounted to a loss of over a fourth of its customers. As *Mr. McKinstry*, the Vice President in charge of sales, said:

> "The loss of the 4,778 dealers who had done a business with us in the year previous of $17,377,246.02 meant a loss to the Harvester Company of an opportunity to repeat that amount of business the following year for the discontinued dealer, as a rule, succeeded in holding his own customers. The local dealer had a good will and his old customers kept coming to him for repairs for the line he had been obliged to give up and then he sold them competing goods" (R. 176).

THE IMPORTANCE OF THE IMPLEMENT DEALER—HIS GOOD WILL AND CONTROL OF LOCAL TRADE.

Mr. Peck of the Moline Plow Company said:

> "Assuming competition between a number of different harvesting lines of different trade names, but all of them of demonstrated good design, I would

times and the proceeds in the form of farmers' notes were turned over to the Company in payment for the goods. Discontinuance of commission contracts occurred generally in 1917. We had previously made some little progress towards straight selling basis in a limited territory. The commission plan was a constant temptation to local dealer to order liberally and let the Company carry the surplus; it involved constant adjustments because of depreciation of goods not properly housed and cared for by dealers. It was an expensive and undesirable means of marketing the goods. Not until after the passage of the Federal Reserve Act giving broader financing capacity to the country banker, particularly on farm paper, did it seem possible to secure adequate representation of goods on sales basis" (R. 184).

say unqualifiedly that the progress of the line would be a question of representation in the dealer." (R. 266.)

For testimony of other competitors see brief, p. 63.

Mr. Legge testified:

"The good will of the local dealer, now that he has become an independent dealer rather than an agent, is the most important factor in the successful conduct of the implement business today because the question of distribution is the last test of successful or unsuccessful business. There is a very substantial good will in the trade other than the good will of the manufacturer. In my judgment the effectiveness of the retail channels of distribution is the most important factor in the trade—the good will of the local dealer and his efficiency as a distributor." (R. 190, 191.)

In this connection attention is called to Table 3 of the summaries of the implement dealers' testimony (R. 286, 287). This table contains a list of 35 dealers who testified to the good will which an implement dealer controlled and its importance in the sale of agricultural implements. Thirty-one of these 35 dealers had been discontinued under the decree of 1918 and testified that since being so discontinued they had taken up the sale of competing harvester lines and had sold such machines to farmers, who had previously purchased from them harvesting machines of the International Harvester Company.

THE ADVANTAGES ACCRUING TO COMPETITORS FROM THE SINGLE DEALER PROVISION OF THE DECREE.

Aside from the fact that the provision limiting the Harvester Company to one dealer in a town deprived it of many valuable dealers, forever prevented it from attempting to monopolize the supply of dealers, there were

many affirmative, positive advantages which accrued to competitors. These were stated quite fully by the competitors themselves and by discontinued dealers.

(a) *Testimony of Competitors.*

Mr. Bradshaw of the Massey-Harris Company said:

> "I am inclined to the opinion that the decree against the Harvester Company in 1918 freed some dealers who were otherwise engaged with that Company. Of course there are many dealers now who on account of the distress in business do not find it profitable to continue, but we have been able to obtain dealers in numbers satisfactory to us" (R. 257, 258).

For other testimony of competitors see brief, p. 64, 65.

(b) *The Testimony of the Dealers.*

The evidence of the discontinued dealers called by the defendants in this case proves beyond dispute that they can and do sell successfully in competition with the dealers retained by the Harvester Company the harvesting machines of each and every competitor of the Harvester Company.

(1) All the discontinued dealers called as witnesses testified that taking into consideration the conditions of the trade in the last three years they felt that they had met with success in selling these competing harvesting machines. In some instances the line of harvesting machines which they took up, upon being discontinued, were well known in the territories in which they

sold, but in many instances the discontinued dealers successfully introduced these machines.

(2) Thirteen of the discontinued dealers testified that since taking up the competing harvester line they had sold more harvesting machines than the dealer handling the International harvesting machines, and twenty-five testified they had sold as many as the International dealer or that they had sold as many machines as prior to their discontinuance as International dealers (R. 288).

(3) Fifty-four of the dealer witnesses testified that a capable dealer could take any well made line of harvesting machines and sell them successfully in competition with a dealer handling the harvesting machines of the Harvester Company (R. 287). This list included dealers who handle every make of harvesting machines on the market.

(4) The discontinued dealers have been aided to some extent by the fact that, at the time they were discontinued, they usually had on hand repair stocks which they had purchased from the Harvester Company. Their former customers who in the past had bought from them International harvesting machines continued to come to their places of business to obtain repairs. This gave these dealers the opportunity to show these customers the new lines of harvesting machines, the sale of which they had taken up, and thus afforded an excellent opportunity for them to retain, as they did in many instances, their old trade. While, under the terms of the decree, the Harvester Company has not sold its repairs to more than one dealer in a town, yet the discontinued dealers, after their stock of International repairs had been exhausted, were able to purchase all the repairs for International machines that are usually in demand from manufacturers, known in the trade as "pirates," who specialize in manufacturing these repairs. (R. 177, 191, 324)

The following quotations from the dealers' testimony are fairly illustrative of the situation.

Mr. Dallas Sullivan, a discontinued dealer, said:

"The decree in this case from my observation has been a boon for the Deere Company and a detriment to the Harvester Company. Before this decree the Harvester Company could have a man on one side of the street selling McCormick and on the other side of the street selling Deering. They could monopolize the harvester business. Now when this decree came the man on one side of the street handles both the Deering and McCormick and the man on the other side would take on the next best which would be the Deere. There is keen competition between the Deere dealers and the Harvester Company dealers in selling harvesting machines." (R. 323, 324.)

* * *

"We have sold those machines (Deere) usually to customers who have been patronizing the firm in years gone by who have been our permanent customers; if they need a plow or a mower or a binder they come to us. Two brothers, for example, came in to get a new knotter for their McCormick binder; we had a Deere binder on the floor; after considering the price of a knotter and at what price we could take their binder in in trade, they bought the Deere binder. * * * We carry guards and sections for International machines and we have a few carried-over International repairs. We have replenished them by buying from companies that make guards that fit the machines, say, Whittaker of Chicago, or Henry & Allen." (R. 324.)

A. J. Kleinjan, a dealer at Durant, Ia., testified:

"When I changed from the International to the Massey-Harris line I had some International repairs which I have been selling to customers who formerly bought International machines from me, in order to keep my customers coming in, and I have succeeded in holding them. I sell Massey-Harris machinery, binders and mowers to customers who formerly bought the International." (R. 313.)

(e) *Testimony of the President of the Harvester Company.*

Mr. Legge testified:

"These dealers made other arrangements for their supply and continued in the trade, the majority of them at least. I do not know of any that discontinued as retail dealers simply because of this change. There was ample opportunity to purchase their supply of harvesting machinery from others. * * * Sometimes we were able to choose which dealer to retain in a town, and frequently not. It was purely a business negotiation in which two parties were interested. The dealer frequently preferred to secure his supply from some one else because of other trade reasons. Regarding the advantage to our competitors of forming connections with these discontinued dealers, they were experienced people in the implement business, at least we tried to have our contracts with experienced people. The local dealer of any standing and efficiency experienced in the business has a clientele of farmer customers who come to him for requirements and they would naturally come to this fellow for repairs for the machines they had previously sold for us. He usually retained the stock of repairs he had on hand and replenished those by purchases from other makers so that he capitalized the experience to his own benefit and indirectly to the benefit of the competitors who placed their goods with him." (R. 190.)

THE SINGLE DEALER PROVISION OF THE DECREE HAS FORCED THE HARVESTER COMPANY TO A SINGLE LINE OF HARVESTING MACHINES

Mr. Legge testified:

"The change was not made in anticipation of the filing of the petition but for natural economic reasons. When it was made we had no anticipation of this petition or of any similar proceeding being instituted." (R. 192.)

Some of the difficulties of marketing the McCormick and Deering line through the same dealers were illustrated and foreshadowed by the difficulties experienced between 1913 and 1918. When the Harvester Company commenced about 1913 to lose dealers, due to the increased competition, it was forced to place more than one of its lines with one dealer, instead of being able to place each of its lines with a different dealer. The result was unsatisfactory and accounted in part for the rapid decline in the sales of Osborne, Champion and Milwaukee machines between 1912 and 1918.

In speaking of this situation *Mr. Legge* said:

> "Between 1913 and 1918 the number of the Company's local representatives decreased approximately ten thousand. This was partly through increased competition as explained, and partly through the change from the old system of commission contracts to the straight sale contract basis which involved a credit element which resulted in the elimination of a good many accounts, the credit resources not being sufficient to justify the hazard of selling the goods. This reduction in distributers resulted in bunching the lines to maintain representation and protect the customers on repair service. Contracts for two or sometimes more lines were placed with the same dealer. The dealers did not take to that very kindly as it involved an additional expense to them, duplicating repair stocks and various other inconveniences, and did not give as efficient service on two or more lines made by the same manufacturer as they had given on the sale of a single line. As presented to us by our salesmen who were endeavoring to cover the territory on all lines, the dealers stated that this created confusion. Their facilities were not such that they could keep them separate without more or less expense, and the stock argument was that inasmuch as we owned both of the lines, it did not make any difference to us whether they sold thirty machines of three different lines or thirty of one line. Why should we insist on their carrying this duplication?" (R. 184.)

The officers of the Company from past experience thus knew of the difficulties of marketing two lines through a single dealer. They were not ready, however, to give up the substantial good will of the McCormick and Deering lines, as separate and distinct machines, without making a fair trial of marketing them through a single dealer.

Mr. Legge testified:

> "Before going to the one line we tried to find out whether it was practicable from a business standpoint to market both lines through one dealer rather than combine the lines. We tried it out." (R. 191.)

But he said:

> "The same reasons I have mentioned making the service of the dealer unsatisfactory and inefficient in selling two or more of our lines continued to apply after the 1918 decree to the two that we had left, and inevitably led to our going to one line throughout the entire line of manufacture known as the McCormick-Deering line. This problem was a matter of some difference of opinion and discussion for a year or two after the entering of the decree." (R. 191.)

Mr. J. F. Jones was appointed Sales Manager in March 1919. He testified:

> "We were still maintaining two or more dealers, but were prepared to comply with the provisions of the decree in 1920. I interviewed dealers and found that they were adverse to taking on the two or more lines, and they expressed a desire for a single line, because the handling of two lines meant an increase in their investment and storage and complication of their service problems and placed upon them the obligation of keeping a double line of repairs. Some dealers were handling like lines produced by different companies, but that is a different matter. A dealer will take the Deere line and the International Harvester line in order to get the benefit of the advertising and sales efforts of both companies, but

> he would object if one company asked him to take that burden without any additional advantage in the way of sales assistance and advertising. I have discussed the subject, and I know from my own experience as a dealer." (R. 246.)

He also said that he brought the matter to a head in the fall of 1920 and shortly thereafter it was decided to design a new harvesting line (R. 246). The evidence showed that in the case of the binder this proved to be a difficult engineering feat which involved considerable time (R. 192, 247, 248). A few of the new binders were put out in 1921 and were not satisfactory (R. 191). Several hundred redesigned machines were sold in 1922 and five thousand were built in 1923 (R. 247).

The Harvester Company for its domestic sales now makes only one line of grain harvesting machines and rakes. While the Harvester Company makes two corn binders these are distinct and different machines used for different purposes and for different conditions of the corn crop met in different parts of the country (R. 191, 192).

Mr. Legge testified:

> "All of these changes involved considerable expense. It is considerable of an engineering job to amalgamate the cutting apparatus of one machine with the binding apparatus of another. It has involved three years of active experimenting and engineering work and following that a rather radical change in the shop equipment for producing the machine as redesigned." (R. 192.)

APPENDIX TO PART IV.

THE SALES OF THE CHAMPION, OSBORNE AND MILWAUKEE LINES OF HARVESTING MACHINES.

The principal business of Avery & Sons is in the South and Southwest. The plant of Avery & Sons is at Louisville, which is admirably adapted for the shipment of machines to the territories where Avery & Sons have their principal business. Avery & Sons therefore refused to purchase the Harvester Company's plant at Springfield, Ohio, which not only was unfavorably situated for their trade, but would have involved the necessity of Avery & Sons maintaining two agricultural implement plants—one at Springfield and one at Louisville (R. 87, 88, 90, 270, 389).

The Emerson-Brantingham Company had a well-equipped manufacturing plant at Rockford, Illinois, where it already was manufacturing its old line of mowers and rakes and most of its other agricultural implements. The Emerson Companys' principal business territory is in the middle west and manifestly Rockford is a much better point from which to serve that territory than is Auburn, New York, where the plant of the Harvester Company which manufactured Osborne machines was located. The Emerson-Brantingham Company therefore wisely and properly declined to purchase the Auburn plant (R. 81, 82, 187, 389).

* * *

The delay in the sale of the Milwaukee line was not of the Harvester Company's choosing. As *Mr. Legge* testified:

> "An effort was made after the decree of 1918 to sell the Milwaukee line. There had been a number

of negotiations before the negotations started for its sale to the Moline Company. I personally tried to sell it to Mr. Ford and failed. We had a deal we thought practically closed with the Case Thresher Company, of Racine; also one with the Minneapolis Steel and Machinery Company, Minneapolis. These were at different times." (R. 219)

AVERY & SONS.

Avery & Sons was established in 1825; its plants and head office are in Louisville, Kentucky. It has branch houses at

Dallas, Texas	Little Rock, Ark.
Houston, Texas	Minneapolis, Minn.
Amarillo, Texas	Shreveport, La.
San Antonio, Texas	Memphis, Tenn.
Atlanta, Ga.	Montgomery, Ala.
Oklahoma City, Okla.	Charlotte, N. C.
Omaha, Neb.	Kansas City, Mo.
New Orleans, La.	

(See R. 87, 88, Pet. Exh. (S) 22 and (S) 26—R. 428-430.)

The principal trade of Avery & Sons is in the South and Southwest and no implement house has more branch houses in the South than Avery & Sons (R. 270, 271).

Mr. Black, who has been with Avery & Sons over thirty years, and is now its President, testified:

"When I went with Avery in 1894 they were manufacturing plows, planters, cultivators, and an assortment of one-horse tillage tools. They have since added disc harrows, stalk cutters and harvesting machines." (R. 269)

Avery & Sons thus have, as its Vice-President Mr. Taylor stated, a "fairly complete line of agricultural implements" (R. 89).

Mr. Oliver, the principal owner of the Oliver Plow

Company, testified in reference to Avery & Sons' plow and tillage business that

> "South of the Ohio I rather think B. F. Avery & Sons are as strong as anybody down there." (R. 251.)

THE EMERSON-BRANTINGHAM COMPANY.

The head office and principal plant of this company is at Rockford, Illinois. It has other plants at Minneapolis, Minn., Waynesboro, Pa. and Batavia, Ill. It has branch houses at

Denver, Colo.	Auburn, N. Y.
Peoria, Ill.	Salisbury, N. C.
Rockford, Ill.	Fargo, N. D.
Indianapolis, Ind.	Columbus, Ohio
Des Moines, Iowa	Oklahoma City, Okla.
Wichita, Kan.	Harrisburg, Pa.
Minneapolis, Minn.	Sioux Falls, S. D.
Kansas City, Mo.	Nashville, Tenn.
St. Louis, Mo.	Amarillo, Texas
Billings, Mont.	Dallas, Texas
Omaha, Neb.	

(See R. 83, Petitioner's Exhibit 11, R. 405.)

The Emerson-Brantingham Company was founded in 1852 (R. 83). For many years it has made a long line of agricultural implements, tractors, threshers, plows, clover hullers, hay balers, harrows, pulverizers, listers, planters, stalk cutters, drills, wagons, engines, manure spreaders, sweep rakes, side delivery rakes, stackers, combined rakes and tedders, sulky rakes and mowers (O. R. Vol. I, 352, 353; O. R. Vol. II, Defendants' Exhibit 196, following p. 1352; R. 83).

Mr. Oliver testified that:

> "B. F. Avery & Sons, Emerson-Brantingham and Moline Plow are old and established concerns in the business. Their plow and tillage lines are well and favorably known in the trade. They make good goods and they are favorably known by the users." (R. 251.)

Mr. Silloway testified that the Emerson-Brantingham Company was one of the leading plow manufacturers in the United States and that its competition was strong throughout the United States (R. 261).

The record in the former proceeding showed that the Emerson Company had a growing and prosperous business (O. R. Vol. II, 352, 353). Its business was prosperous in 1920. In common with practically all agricultural implement companies it lost money in 1921 and 1922 but its business improved in 1923 (R. 83, 84).

THE MOLINE PLOW COMPANY.

The company, a Virginia corporation, is a reorganization of an Illinois corporation (R. 102, 103) whose business was fully described in the former proceeding. The Moline Plow Company, according to the record in the former proceeding, was a very successful and prosperous concern (see testimony of Mr. Barber, O. R. Vol. II, 1057-1062; Stephens, O. R. Vol. II, 1160-1163). This testimony covered the history of the company till about the middle of 1913. The company manufactured plows, harrows, wagons, cultivators, seeding machines, planters, manure spreaders, side delivery rakes, hay loaders, hay tedders, beet seeders, potato diggers and other implements (O. R. Vol. II, Defendants' Exhibit 196, p. 1352). In January, 1913, it bought the business of the Adriance-Platt Company at Poughkeepsie, New York, which manufactured grain binders, corn binders, mowers and sulky hay rakes. Sometime subsequent to 1913 and prior to 1920 the stock of the Moline Plow Company was acquired by the Willys-Overland Company and it took on the manufacture of tractors (R. 107, 109).

In the fall of 1920, the Willys-Overland Company was financially embarrassed and this, together with its un-

profitable tractor business and the farm depression involved the Moline Plow Company in financial difficulties also. Because of the then existing relationship between the two companies the Moline company could not reorganize until the Willys company had done so and it was not until the summer of 1922 that its officers could plan intelligently for the future. (R. 107-109.)

The reorganization consisted of issuing the debentures and the first preferred stock in the Virginia company to the creditors of the Illinois company; the second preferred stock to the holders of the preferred stock in the old company and the common stock to the holders of the senior securities, with a small block for the common stockholders of the old Illinois company. The effect of the reorganization was to make the creditors the principal stockholders, and to eliminate in the main the old common stockholders. (R. 103.)

Mr. Peek, the President of the company, said that the statement in the annual report of 1922 reading as follows:

> "The position shown is unusual. Against book value of assets totaling $32,229,123.16, the inventories being computed on prices at the lowest points of the recent depression and far below present markets, the company has reserves of $10,788,716.97, or thirty-three and one-third per cent. The ratio of the net quick assets to current liabilities is nearly fourteen to one. Its fixed interest charge is less than $875,000 per annum.
>
> "We know of no company whose values are so conservatively taken or whose ratio of current debt to quick assets is so favorable,"

was true except that since then the tractor business had been in the process of liquidation at bargain counter prices and this had changed the figures somewhat, but that the company had practically no current indebted-

ness; that it had cash on hand substantially in excess of its current liabilities and in his judgment it was in as favorable a position to carry on a successful trade as when the statement was put out. (R. 110.)

During 1919, 1920, 1921, 1922 and 1923 the Moline company maintained branch houses at the following points—Petitioner's Exhibit (S) 39 (R. 453):

Atlanta, Ga.	Minot, N. D. (1919 only).
Baltimore, Md.	Moline, Ill.
Bloomington, Ill.	New Orleans, La.
Columbus, Ohio.	Oklahoma City, Okla.
Dallas, Texas.	Omaha, Neb.
Denver, Colo.	Portland, Ore.
Des Moines, Ia.	Poughkeepsie, N. Y.
Indianapolis, Ind.	Salt Lake City, Utah.
Jackson, Mich.	Sioux Falls, S. D.
Kansas City, Mo.	Spokane, Wash.
Los Angeles, Cal.	Stockton, Cal.
Minneapolis, Minn.	St. Louis, Mo.

Mr. Silloway, Vice President of Deere & Co., testified that the Moline Company was next to the Deere Company and the Oliver Company, the largest manufacturer of steel plows in the United States (R. 262).

* * *

The three oldest names in the harvesting machine business are McCormick, Osborne and Champion, in the order named. Champion machines were first made in 1868 and have been manufactured ever since, and Osborne is even older (O. R. Vol. I, 268).

In the former proceeding Professor Davidson, of the Agricultural Engineering School of Iowa State College testified that the Champion and Milwaukee binders had improved more than had the Deering and McCormick binders (O. R. Vol. II, 1185, 1187).

Mr. Oliver testified:

"I am familiar with the Osborne harvester line sold to the Emerson-Brantingham Company and the Champion line sold to Avery & Sons. Both lines sold well. They were in the trade a number of years, and I know quite a bit about their working. They gave a good account of themselves and they stood high in the trade. I think their good reputation existed in 1918 and does to-day. • • • They were known all over the United States favorably." (R. 253, 254).

Mr. Black said:

"We have found the Champion line to be well known in our territory, and the good will which we found in the Champion line has assisted our business generally." (R. 272.)

He also said:

"We are satisfied with the Champion line, and it has given satisfactory results to our customers and farmers who have used them." (R. 270)

Mr. Peek testified that before purchasing the Milwaukee line his engineers had investigated it and found it satisfactory (R. 265). He also said that with the Milwaukee line the Moline Company would gain customers in the middle west (R. 264).

Mr. Nuss, Secretary of the Wisconsin Implement Dealers' Association, said:

"In years gone by the Milwaukee harvesting machines were largely sold in Wisconsin, and were one of the most popular lines. I am acquainted with the Milwaukee, and it is a good line." (R. 306)

• • •

Mr. Peek testified:

"We started a new system of sales when we took the management of the Moline Company in the fall of 1919. We put it into effect in 1920 and have pursued it ever since and are still developing it.

We are entirely satisfied with the results. Our business this year (1923) has been very much better than last year and it was all done on the cash plan. 1924 looks better to us than 1923. We have goods to sell and we think we are making a good line, as good as anybody in the trade. Relatively I do not know of anybody who has any better prospects than we have now. Our market is all over the United States." (R. 109.)

Under the new sales system above referred to by Mr. Peek, the Moline Company sells for cash at prices 10% less than its principal competitors. The plan has eliminated great expense in freights, in credits and in collections. (R. 109, 110.) In describing this plan *Mr. Peek* said:

"We sell for cash with sight draft against bill of lading. * * * Generally speaking, we aim to maintain a spread of about 10% under the cash system as compared with the term system. (R. 105.) * * * We are restricting branch houses, as the term is generally understood and as they were used in former years, and are adopting a warehouse system of distributing in more distant localities and jobbing some in the more distant territories. Our maximum discounts are given for carload shipments direct from factory to the dealer. Where we ship out of our warehouses we give less discount than where the dealer buys direct from factory. * * * It has resulted in a tremendous reduction in our expenses, and it is from those expenses that we hope to be able to maintain the differential of about 10% under what we call the Moline plan, giving the dealers the profit of the saving which we will achieve from that method, relying on the preferential discount to attract business rather than the weight of sales effort to push it. We furnish parts always, charging for them and we charge for service wherever they ask us to send a man to help them; but if a man is able to serve himself we don't charge him with service in the sales price." (R. 110.)

He also said:

> "Our whole plan of selling must attract the best dealers, because the poor dealers cannot buy under our plan, and the best dealers are going to be attracted by the additional margin of profit" (R. 266).
>
> "Hay tools, that is mowers and rakes, are more generally sold throughout the United States than almost anything else in the implement business. We manufacture now a part of the hay tool line and we desire to continue, for the convenience of our customers, the manufacture of the balance of the hay tool line so we may assemble complete cars and get the advantage of carload rates of freight which is impossible with a decidedly limited line. Our trade is better satisfied if we can supply them with these harvesting machines as well as tillage tools." (R. 108.)

* * *

Mr. Black, of Avery & Sons, said that

> "It would probably have cost us six or seven times as much to make our own patterns and manufacturing equipment, and it would also have required 10 years to have perfected a design so that there would have been no weak spots left in it." (R. 270)

Deere & Company developed its own binder, yet *Mr. Silloway* said that

> "it would be easier to get into trade by buying a well known harvester line than by designing a binder (R. 261). * * * We could have gotten into the binder business easier by buying a well and favorably known binder than by developing one, because such a binder will already have an established trade, and primarily because you buy the patterns, dies and the jigs and the development of the machine over a period of years—the experience of engineers—instead of having to start at the ground and develop that experience yourself, a long, difficult, and costly operation" (R. 263).

The first year Deere & Company were in the grain binder field it sold 10 binders in this country; the next year 931 (O. R. II, 1167). The first year the Emerson Company was in the binder trade it sold 3,522 Osborne binders; the next year 4,983 (R. 405). The first two years Avery & Sons was in the binder trade it sold 1,460 binders (R. 428).

Mr. Oliver, President of the Oliver Chilled Plow Works, testified upon this point as follows:

> "Q. Assuming that the Emerson-Brantingham Company and the B. F. Avery & Sons Company, or for that matter any other implement company, desire to add a harvester line to their other lines, in your opinion as an implement manufacturer would there be any advantage in entering the trade by acquiring an existing line with a standing such as the Osborne and Champion lines as compared with developing new harvester lines for themselves?
>
> "A. There is a decided advantage. The lines were both always favorably known. They were known all over the United States favorably. And I am quite sure that to attempt to build a line of harvesting machines such as you refer to, any manufacturer would be taking great risks and would have some serious troubles to meet in correcting certain errors that always creep into a tool of that kind." (R. 253, 254)

Mr. Legge testified:

> "There is a very distinct advantage to such concerns desiring to take on a harvester line in acquiring an existing established line rather than developing a new one. First, whatever element of stability or good will went with the line they acquired and, what is still more important, the elimination of the engineering developing uncertainties that usually go with the production of any new farm tool. Further, they would acquire a certain amount of repair business on machines already in the field which helps

to attract dealers, as the demand for those repairs brings a customer to the dealer's store." (R. 187)

• • •

STATEMENT
COMPARING SALES OF CHAMPION LINE
WITH
McCORMICK AND DEERING LINES
BINDERS, MOWERS, AND SULKY RAKES
(In Quantities).

1918

	Champion	McCormick	Deering	Total McCormick and Deering
Grain Binders	474	31,164	31,918	63,082
Mowers	841	44,980	35,933	80,913
Sulky Rakes	475	17,782	12,773	30,555
Total	1,790	93,926	80,624	174,550
Per Cent of Champion Sales to McCormick and Deering Sales				1%

(Figures taken from Pages 397 and 398 of Record—Petitioner's Exhibit (8) 4).

1923

	B. F. Avery & Sons (Champion Line)	International Harvester Company
Grain Binders	493	30,161
Mowers	3,714	70,341
Sulky Rakes	2,639	27,627
Total	6,846	128,129
Per Cent of B. F. Avery & Sons Sales to International Harvester Company Sales		5.3%

(Figures for B. F. Avery & Sons taken from Page 428 of Record—Petitioner's Exhibit (8) 21. Figures for International Harvester Company taken from Pages 397 and 398 of Record—Petitioner's Exhibit (8) 4).

STATEMENT
COMPARING OSBORNE GRAIN BINDER SALES
WITH
McCORMICK AND DEERING GRAIN BINDER SALES
(In Quantities).

1918

Osborne	1,374
McCormick	31,164
Deering	31,918
Total—McCormick and Deering	63,082
Per Cent of Osborne Sales to McCormick & Deering Sales	2.2%

(Above figures taken from page 397 of Record—Petitioners' Exhibit (8) 4.)

1923

Emerson Brantingham Co. (Osborne Line)	991
International Harvester Company	30,161
Per Cent of Emerson Brantingham Sales to International Harvester Company Sales	3.3%

(Figures for Emerson-Brantingham Co. taken from Page 405 of Record—Petitioner's Exhibit (8) 10; figures for International Harvester Company taken from Page 397 of Record—Petitioner's Exhibit (8) 4.)

• • •

Dealers were called, who prior to the entry of the decree had handled Champion or Osborne machines for the Harvester Company and thereafter sold them with increasing success for Avery & Sons, or for the Emerson-Brantingham Company (Stoudenmire, R. 326). In other instances, the dealer witnesses had handled the Deering and McCormick lines and upon being discontinued in accordance with the decree had taken up the Champion or Osborne lines and sold them successfully (Beck., R. 328; McCarthy, R. 314; Glasrud, R. 321). In still other instances, dealers who had not handled any machines

for the Harvester Company had taken on the Champion or Osborne lines and met with success in their sale (Jenner, R. 311; Nuss, R. 306).

The evidence also gives instances where the Champion and Osborne lines were successfully introduced into territories where they had not been sold for many years previously (McCarthy, R. 314; Hieb, R. 327, 328; French, R. 316; Reynolds, R. 308, 310).

A few examples of the testimony, which are illustrative, will be given here.

L. L. Jenner, of Marengo, Indiana, testified:

> "I commenced handling Champion harvesting machinery in the fall of 1919, and, considering farm conditions, have met with good success with it. It is well known and popular in our vicinity. The Champion binder is the leading binder in our vicinity.
>
> "The Deering, McCormick, and some Milwaukees are sold. The Deere harvesting machines and the Massey-Harris harvesting machines are also sold. In our county other dealers sell Champion machines. I know no reason why an implement dealer can not sell the Champion line and compete successfully with a dealer handling the Harvester Company lines. I have done it. Competition exists in the sale of the harvesting machines I have mentioned throughout the territory in which I do business. I have observed no obstruction to free competition in the sale of those harvesting machines." (R. 311.)

E. E. Voorhees, President of the Illinois Implement Dealers' Association, in 1923, testified:

> "I know of no reason why a capable dealer can not handle the Emerson Brantingham or the Deere or any other well-made line of harvesting machinery and sell it successfully in competition with a dealer handling the Harvester Company's line. I think he can. It is being done anyhow." (R. 304.)

R. G. Nuss, Secretary of the Wisconsin Implement Dealers' Association, testified:

"We handled the Champion grain binder, Osborne corn binder, and Minnesota grain binder. In 1919 we sold about twenty grain binders and the same number of corn binders. All our grain binders were purchased from Avery, and the Osborne from Emerson-Brantingham Company. In 1920 we did not sell over ten grain binders and fifteen corn binders, in 1921 not over five grain binders and ten corn binders, and about the same number in 1922. In 1923 we sold eleven grain binders and eighteen corn binders." (R. 307.)

S. F. Stoudenmire, of Sumter, S. C., testified:

"In 1919 Booth Boyle took over the John Deere; we took over the Champion for Avery. Epperson took over the Osborne for Emerson-Brantingham. Pierson went out of business and was succeeded by Jennings, Blanding Mule Company, which took over the full International Harvester Company line. They have continued to handle these lines ever since.

"The Champion line is well known around Sumter and is a good line. I know of no reason why an able dealer can not take the Champion and compete successfully with a dealer handling the International Harvester line. There is considerable competition in the agricultural implement business and in harvesters.

"In 1919 we sold two binders, thirty-three mowers, twelve rakes; in 1920, four binders, twenty mowers, eight rakes; 1921, two binders, fourteen mowers, ten rakes; 1922, six binders, eighteen mowers, seven rakes; 1923, six binders, thirty-two mowers, fifteen rakes. All rakes sold were sulky hayrakes and Champions.

"I think we sold more harvesting machines than any other dealer in Sumter. The Deere dealer would come next and the Harvester Company third." (R. 326).

The evidence shows that of the 80 communities specifically described in the dealer testimony the harvesting

machines of the Emerson-Brantingham Company were sold in 33 of them and the harvesting machines of Avery & Sons were sold in 22. (R. 283, 285)

• • •

When the Harvester Company was organized it undertook to market the McCormick, Deering, Champion, Osborne and Milwaukee lines both through separate salesmen and separate dealers (O. R. Vol. II, 1360). Later, the same salesmen sold all the lines but largely through separate dealers. This resulted in a falling off in the sales of the smaller lines described by *Mr. Legge* as follows:

> "We undertook to market those goods through the same branch houses and the same salesmen, and learned to our sorrow that in our judgment it cannot be done. It is difficult to train a class of salesmen to carry a large line of implements of different types, and impossible, in my opinion, to form an organization that can successfully carry separate lines of nearly identical tools constructed to do the same work. Our salesman would naturally follow the line of least resistance; and if he was assured of a contract in a town, the first one he would give the choice of what he wanted and the second one would take the second choice; and if any line did not happen to have very much of a trade or following in that community it seemed to be beyond his ability to place it satisfactorily. The arrangements with the local dealers throughout the country were made by these traveling salesmen, with an occasional exception when the branch-house manager might make a contract." (R. 183)

• • •

The evidence was clear and undisputed that there was nothing in the design of either the Champion or Osborne lines at the time they were turned over to the purchasers

which rendered their manufacture any more costly than the manufacture of the McCormick and Deering line.

Mr. Legge testified:

"The higher costs of the Osborne, Milwaukee and Champion machines was largely a question as to the relation of product to investment and the facilities for producing." (R. 184) • • •

"In the case of the Osborne line, in pursuance of the policy of pushing it abroad we continued the manufacture there of the heavier machine. My recollection is one hundred eighty-five pounds or something like that more than the same size of machines built in the other plants. It was popular in the foreign trade. • • • That added weight increased the cost somewhat at Auburn. We also had a period of a few years where we had some rather serious letting down in the efficiency of administration of the plant, coupled with some labor troubles that resulted in several minor strikes, tying up the plant at various times. That was eventually cleared up and new management installed, but we were still handicapped somewhat in the more expensive construction of the Osborne line for the European trade. One of the conditions of sale under which it was sold to Mr. Brantingham was that we should correct that with our engineering force; that we should bring down the weight of the Osborne machine to a weight comparable with the Deering and McCormick machines of the same size. This was done and in the last year that we made goods there for Mr. Brantingham, 1920, which was in fact the last year in which there has been any binder trade worth mentioning in the United States, we succeeded in getting a cost that was fairly comparable with that of our practice in the Chicago factories, being, I believe, within a dollar a binder in cost, as between Osborne and McCormick in 1920, and on a basis of seven thousand binders at Auburn, compared with the manufacture of around fifty thousand at the McCormick plant in the same year. On mowers we did even a little better, the Auburn cost in 1920 being slightly lower

than the McCormick, which theretofore had held the record for low cost of production on mowers. Several times as many mowers were manufactured at McCormick plant as at the Auburn plant that year. In turning the goods over to Mr. Brantingham we felt that we had brought the line back to a competitive condition in every way with the best practice of our Chicago factories. The Osborne line was then comparable in weight and quality and cost with the McCormick and Deering. In 1920 the Osborne plant was used to around seventy five per cent of its capacity. When we get about seventy five per cent we get satisfactory costs." (R. 185.)

"Regarding the costs of the Champion line, our experience with the Champion was the most unhappy of any. We started out to introduce it more generally in those territories where the former owners had not pushed the trade, and found that we could not do so as it was then constructed, and our first efforts to rebuild it were carried on under the engineers who were employed at the plant at the time we acquired it, whom we thought should be in better position to do the rebuilding than anyone else less familiar with the line, but they made rather a failure of the job, and after spending several years at it we had to dismiss the bunch and start over again. The new staff was supplied largely from our Deering works, and they did succeed in rebuilding the Champion line, but again we had an unfortunate experience." (R. 186.)

The witness then described the experience in selling to jobbers in South America who later went out of business. He then said:

"As a result of all this we had a very low volume of business in the Champion plant. At and for some time before the time of the sale of the Champion line, the Champion works was running at something less than fifty per cent of capacity. The operations at the Osborne and Champion plants in 1919 and 1920 were not confined to harvesting lines. In both plants we were trying to fill the surplus capacity with other lines, but had met with greater success on those lines

at Auburn than we had on those at Springfield." (R. 186.) * * *

"The satisfactory costs on the Osborne line comparable with the Milwaukee and Deering costs were in the years 1919 and 1920—more pronounced in 1920. We had manufactured a much larger number of machines at that plant many years previously while we were exporting heavily from the plant, but in 1920 we reached the best percentage of production we had had since early in the war. The lightening of the machine and perfection of the design was also accomplished in the Champion line, but because of the very small output of goods of any kind in that factory, less than 50 per cent of the capacity, we did not obtain as satisfactory costs in the Champion plant as in the Osborne." (R. 211.)

* * *

Both the Emerson Brantingham Company and Avery & Sons during 1919 and 1920 sold Osborne and Champion machines made for them by the Harvester Company. Since 1920 they have manufactured these lines themselves at Rockford and Louisville respectively. The Emerson Co. makes its own malleable castings for these binders and the only thing it purchases from the Harvester Company are canvasses. Avery & Sons buy some malleable castings and rake teeth from the Harvester Company (R. 88). The Osborne line now constitutes between 20 and 25% of the entire output of the Emerson-Brantingham Company (R. 83). Avery & Sons have constructed at Louisville a harvester plant 300 feet long and 100 feet wide, having a capacity to make 4,000 to 5,000 binders, 8,000 mowers and 8,000 rakes a year (R. 90, 270).

The evidence shows that the harvesting machines now produced by Avery & Sons and the Emerson Company are of high quality.

Mr. Nass, a dealer at Madison, Wisconsin, testified:

> "I am acquainted with the Champion machines made by Avery & Company and I think they are as good as any." (R. 306)

Mr. McCarthy, a dealer at Emporia, Kansas, testified that the Champion and Osborne machines

> "are designed so as to give satisfaction to my trade, and the Emerson Brantingham Co. and B. F. Avery & Sons have given me as dealer satisfactory services on these lines." (R. 314)

APPENDIX.

PART V.

PRESENT COMPETITIVE CONDITIONS.

The evidence of the dealers shows that in various localities different machines have the lead. Thus Mr. Jenner testified, as we have seen, that in his community the Champion was the leading binder; to like effect was the testimony of Stoudenmire (311; 326), in Richmond, Virginia, the Osborne is the leading harvester line. (R. 329.) Mr. Puchner sold 45 Deere binders in 1919 and his testimony is clearly to the effect that the Deere is the most popular machine in his community. (R. 333).) To the same effect is the testimony of Mr. Sullivan. (R. 322, 323, 324.) Mr. Kleinjan testified that in his community the Massey-Harris harvester line has the lead (R. 313), and Mr. Chatten said that in Quincy, Illinois, the Massey-Harris sales of harvesting machines were as large as the International's. (R. 310.) Mr. Sellers testified that in his county there were more Moline binders than any other make. (R. 297.)

These are not uncommon examples, for many other dealers discontinued under the decree of 1918 testified to taking on competing harvester lines and selling more or as many machines as the Harvester Company's dealer in the community. (R. 288.)

* * *

Mr. Legge testified:

> "Taking account of the fact that the harvester business is now substantially centered in the long-line companies, that they have adequate branch houses and transfer houses, and that the Harvester Com-

pany is restricted to a single dealer in a town, I cannot think of any advantage that the Harvester Company now has over its competitors in the distribution of its harvesting line, including therein mowers and rakes. In my judgment competition is on a sounder basis than it has ever been in my lifetime. In my experience and years on the road I have seldom, if ever, known a locality where there were more than four or five lines of implements, harvesting machinery, plows, or anything else offered for sale in that one town. We met with different competition in different places, but the supply was more or less sporadic. It would be this manufacturer in this one county and some other manufacturer perhaps in an adjoining county, but the avenues of retail distribution, the business, was not of sufficient volume to support more than four or five in any one locality. With the situation as it is to-day, the lines broadly, having drifted or been drawn to the full-line business, they are more equal, on a comparable basis of competition, than they ever have been. To a large extent we meet everywhere the same competitors. We do not meet Avery & Sons, of Louisville, so much in the northwest territory, in the Dakotas, although they job their implement line through an old jobbing house of at least forty years' standing up there that does give them representation in that territory. They are quite strong throughout the South and Southwest, where they have a very large business.

"The number of harvester lines are as great as, in my experience, have ever been offered to the farmer in any particular locality in the United States. There may be localities where at the moment there are a less number of retail dealers selling them, but the number of lines produced and generally offered for sale throughout the country is as great as has ever been available to the buyer in any particular locality. Because of their becoming part of the full-line and integrated business, they are on a much more solid, substantial, and secure basis than was ever true in the days of short-line production." (R. 195, 196)

On cross-examination he said:

"The Massey-Harris Company's business on their smaller tools, tillage implements, etc., is mostly in the Eastern States; on their reaper-thresher in the western territory; on their binder I think perhaps their largest business is in Minnesota and the Dakotas. Their representation through the Central States immediately tributary to Chicago is less than farther west. I have no definite knowledge as to whether 50% of the Massey-Harris harvesting machines are sold east of Chicago. They only entered the trade in the Western States on harvesting machinery in recent years. The trade in the old Johnston line they acquired at Batavia was very largely in the States east of Chicago. B. F. Avery & Sons' business is largely in the South. It developed largely in the cotton territory, and they specialize on quite a number of cotton tools. We meet Deere & Company's competition actively in every county in the United States. I don't think there is an exception. This is in harvesting machines and everything else they have to sell. There are some counties that do not use any harvesting machines." (R. 215.)

Mr. McKinstry testified:

"I have not observed any locality where there has been an absence of competition in the sale of harvesting machines or any obstruction to the free operation of that competition or any restraint upon the harvester-machinery industry or other farm-implement industry." (R. 174).

Mr. Brookbank, branch manager for the Harvester Company at Indianapolis, Indiana, testified:

"The competition from other manufacturers extends generally throughout all the counties I spoke of. One manufacturer may have the leading trade in one locality and another manufacturer in another locality." (R., 179)

Joel R. Cary of Carrollton, Missouri, who owns and operates his own farm, President of the Farmers' Union

of Missouri, which has a membership of over 20,000 farmers, testified

> "The harvesting machines sold in my county are the McCormick and Deering, Osborne, Moline, and the Deere." (R. 345.)

On cross examination he said:

> "I think the International harvesting machines lead in my county. The John Deere is a heavily used machine. Osborne and Moline are also used." (R. 346.)

Walter E. Phillips of Decatur, Michigan, President of the Michigan Farm Bureau having a membership of 90,000 farmers, and a farmer himself, testified:

> "I am sufficiently familiar with the retail implement business in Michigan to say that there is active competition in that business. There are implement dealers handling different lines of agricultural implements in practically all of our market centers, and that is true of harvester machinery as well as plows, tillage, and other lines." (Rec. 354)

C. H. Hyde, Vice President of the Farmers' Union of Oklahoma, himself a farmer cultivating about 800 acres of land, testified as follows:

> "Wheat is the principal grain crop in Oklahoma. In the eastern part of the wheat belt binders are used. In the middle and western part headers or combined threshers and harvesters are used. • • •
>
> "In my county Case and International Harvester machines are used, also the Avery machine, which was a kind of portable thresher. I have seen a few Holt machines. The Avery is not a combined machine and sells for about half the price of the others. In Alva one dealer sells International harvesting machinery, the Case combined thresher harvester, and John Deere plows. • • • There is competition with the International because they got the lead, since more of them were sold by the first dealer there. The other makes are for sale there and on

just as good terms. The last binder I bought was a Deering.

"The John Deere has been making headway since they took on their binder. I have seen several John Deeres. I use a Champion header. The Champion harvesting machines are well and favorably known in Oklahoma. As far as I have seen there is pretty active competition in the implement business in Oklahoma and there is the same kind of competition in the harvesting line as in the tillage line." (R. 355)

The testimony of the 81 dealer witnesses has been, to a large extent, tabulated (R. 283-292), but the evidence of twenty five of these dealers has been preserved as illustrative of the testimony of them all (R. 293-333).

Table 1 (R. 283-285) gives the names and addresses of the dealer witnesses, the harvester lines they each handled, and the harvester lines offered for sale in the territory in which the dealer witnesses respectively competed for trade. The dealers were asked in regard to competitive conditions not only in their own towns but in surrounding towns in which there were implement dealers with whom they came in competition. In this way competitive conditions in over 281 towns in important farm communities were shown. (R. 282)

This tabulation shows that in most of these communities spread over the principal grain-growing areas of this country, there were from three to five different makes of harvesting machines—counting only the principal competitors of the Harvester Company—offered for sale in each community.

Table 2 (R. 285-286) gives the dealers who testified to the keenness of competition in harvesting machines and that it was similar to the competition existing on other lines of agricultural implements.

Table 3 (R. 286, 287) gives the dealers who testified to the good will attaching to the implement dealer. Most

of these dealers also testified that after being discontinued by the 1918 decree they had succeeded in selling competing harvesting machines to their former customers.

Table 4 (R. 287) gives the dealers who testified that a capable dealer could successfully sell any well made line of harvesting machines in competition with the Harvester Company's dealers.

Table 5 (R. 288) gives the dealers who testified that after being discontinued by the Harvester Company under the decree of 1918 they had sold competing harvesting machines and had done as well or better than the Harvester Company dealers, or as well as they had done prior to being discontinued.

Table 12 (R. 292) gives the dealers who testified that they could have continued as Harvester Company dealers but preferred to become Deere dealers on account of the excellence of its tillage tools.*

Most of the dealers could testify only to competitive conditions in the particular localities in which they conducted their businesses. Some of the dealers, because of wider experience, or due to the fact of their connection with Dealers' Associations, testified to competitive conditions throughout the state, or a large section thereof, in which they did business. Thus:

E. E. Voorhees, President of the Illinois Implement Dealers' Association, testified:

> "From my experience I am generally acquainted with dealers in Illinois and competitive conditions. The harvesting machines most generally sold are the Moline, International, Emerson, In-

*Tables 6-11 (R. 289-292) give respectively the dealers testifying to the importance of the tillage line, the dwindling importance of the Harvester line, the increasing use of tractors and the new avenues of distribution opened up by the Ford tractor the farm depression and the effect of these lines on price reduction.

cluding both the Osborne and their own 'Emerson,' Deere, and Massey-Harris lines. I am personally acquainted with all of them except the Massey-Harris. According to my observation and experience there is plenty of competition through northern Illinois in the sale of harvesting machines and a field for the sale of the lines I mentioned in competition with the harvesting line of the Harvester Company. I know of no obstruction to competition in the sale of harvesting machines in the portion of Illinois with which I am familiar." (R. 304.)

Mr. Witten, a dealer at Trenton, Missouri, and President of the National Federation of Implement Dealers in 1924, said:

"In my vicinity the Massey-Harris, Emerson-Brantingham, Avery, Deere, and International lines of harvesting machinery are handled. There is active competition in the sale of all kinds of agricultural implements. I know of no business where competition is more active for the amount of usage." (R. 293) • • •

"I am acquainted with the Osborne, Champion, Deere, and Massey-Harris lines of harvesting machines, and I know of no reason why an active, able dealer cannot sell any of these lines successfully in competition with a dealer handling the harvesting machines of the Harvester Company. I have done it myself in the case of the Osborne. It is being done in thousands of instances in the case of the Deere." (R. 294)

Mr. Sellers, a dealer at Lebanon, Ohio, and President of the National Federation of Implement Dealers in 1923, said:

"As an experienced dealer in agricultural implements, I would say that there is absolutely no obstruction to full and free competition in all lines of agricultural implements. There is keen competition on all lines of agricultural implements." (R. 296, 297.)

Mr. Armknecht, a former President of the National Federation of Dealers and a Director of it for eighteen years, said:

> "There are five dealers in my county handling Deere harvesting machines; five handling the International harvester; three, including the Fordson, handling the Moline harvesting machinery; and three Emerson-Brantingham." (R. 297.)
>
> "I think a good dealer can sell any line of reputable implements he chooses. I know of no business in which competition is as free and as fierce as in farming machinery." (R. 301)

Mr. Nuss, Secretary of the Wisconsin Implement Dealers' Association, said:

> "Competition is keen in the sale of agricultural implements in all lines. I do not think there is any business in our State where there is more competition than in agricultural implements, and this competition extends pretty much all over the State." (R. 307.)

Mr. Reynolds of North Dakota said:

> "I was president of the North Dakota Implement Dealers' Association in 1919 and was a director two years thereafter. It has between 400 and 500 members and holds annual meetings at Fargo. From my duties in that association I obtained a general knowledge as to the agricultural implement business throughout the State. I find there is competition in the sale of harvesting machinery throughout the State." (R. 309.)

* * *

Mr. Legge said:

> "The grain binder has not maintained its relative importance in the implement trade since 1902. This has been due in part to a change in the development of agricultural conditions. The first crop usually sown on any of our prairie country put under

the plow is a small grain crop of some kind in which a binder is called into use; but as time progresses, diversification, which is becoming more and more popular, dairying and raising animal foods rather than wheat, has become general. As a result the binder is of very much less relative importance than it was when there was a considerable expansion in the acreage put under cultivation. This expansion has ceased with the exception of clearing up a little stump land. It is over with so far as the prairie territory is concerned." (R. 203.)

This testimony was corroborated by that of numerous dealers (R. 289).

As to the replacement of binders and headers by harvester-threshers *Mr. Legge* said:

"Another important change is the introduction of the so-called reaper-thresher or harvester-thresher, which is now recognized as the most economical method of harvesting a grain crop in all territory where it is practical to use it, which means the so-called semi-arid or dry territory of the Western States, where the grain will stand putting in elevators or taking it direct to market from the harvest field. In acreage this territory would be very large—practically the area west of a line drawn from Dallas or Fort Worth, Texas, north through the foothill territory to the Canadian boundary. It is difficult to estimate the percentage of the country's grain crop grown in this territory. At a rough estimate I should say it would not exceed today one-third of the wheat production of the country. The percentage is increasing because of the decrease of wheat grown in the Central and Eastern States. In that area the harvester-thresher is superseding the grain binder to an appreciable extent, in some sections almost eliminating entirely the binder." (R. 203.)

Mr. Gittins said:

"This machine cuts the grain, threshes, separates it, cleans it, and delivers it into a wagon. It takes the place of the old stationary thresher and

the binder or header. The harvester-thresher does not make use of the binding attachment. The principal parts are the cutter bar, cutting the grain, an elevator, and the thresher. The thresher is by all means the more expensive part of the combination. There is nothing complicated about the cutter bar. Taking the machine as a whole, it is very much more like a thresher than a binder. This combination machine is adapted for use in what we designate as the semi-arid territory, including western Texas, western Oklahoma, western Kansas, western Nebraska, eastern Colorado, and some of the west coast country, California, Oregon, and Washington. • • •

"Our company decided to develop the harvester-thresher, because it was very apparent that the trade we were enjoying in our stationary threshers was rapidly going to the harvester thresher type in handling the grain harvest. The field for sale of these machines had not yet been filled to any great extent. They are still using the old separate threshers, headers, and binders. As the machines now in use wear out and the farmers are financially able to buy new equipment, I think the trade in this dry territory will very largely run to the harvester thresher type of machines." (R. 280.)

To like effect see the testimony of McKinstry (R. 174), Bradshaw (R. 257), and list of dealers so testifying (R. 289).

As to the decrease in the sale of binders and mowers due to improvements in the machines and the use of tractors, *Mr. McKinstry* said:

"Binders and mowers have been improved so that they last longer and with the marked increased lives of the machines their sales have lessened. • • •

"There are four sizes of binders made—5, 6, 7, and 8 feet. The 7 foot is most used. With a tractor they use an eight foot, and machines are being made for tractors up to 10 and 12 feet. When drawn by a tractor they move two thirds faster than when drawn by horses and with the greater width do twice the work." (R. 174, 175.)

Stanley M. Sellers, a former President of the National Federation of Implement Dealers' Associations, testified:

> "In our territory, and in Ohio generally, the tillage line is more important than the harvester line as a nucleus for an implement dealer's business, and the harvester line is not as important now as from 1902 to 1913. The harvester has more than three times the lifetime it had in earlier days, and the tractor enables one man with a harvester to do materially more work than he did with one machine." (R. 295.)

The evidence shows that Ford Company makes and sells over 75% of the farm tractors in this country (R. 204, 277), and that the Ford Company has made, since it entered the business in 1917, (R. 204) 362,725 tractors of which only about 12,200 were exported (Defendant's Exhibit (S) 26, R. 612, 279). It is "... evident therefore that a very large number of farmers own Ford tractors and that many of them will probably buy mowers especially adapted to these tractors when their present mowers wear out. Three firms, the Detroit Harvester Company, Roderick Lean & Company, and the Thomas Mfg. Company, make and sell mowers specially designed for use on the Ford tractor. (R. 276, 278, 176, Defts.' Exh. S, pp. 37, 42 and 43 of said Exhibit.)

Mr. Hoover, the Sales Manager of the Detroit Harvester Company, testified to the advantages possessed by mowers of the type specially designed for use on the Fordson tractor over those made by the Harvester Company, as follows:

> "Our mower has an attachment which takes its power from the Fordson itself. The ordinary mower is drawn and takes its power from the wheels, gears attached to the wheels. We take power for this mower from the point on the tractor developed by

the Ford Motor Company for the pulley. That gives the proper speed relation to the cutting knife.

"We have made tests for the purpose of comparing work done by this mower with the horse-drawn mower, and I would say that it will travel three or four times faster. (R. 277.) • • •

"I am familiar with the Deering and McCormick mowers of the International Harvester Company and do not consider those mowers well adapted to the Fordson. The average International horse-drawn mower is geared on the average on a three-to-three relation; that is, the cutting knife makes a complete revolution for every six inches the mower travels forward, and that means it has one speed relation, which is entirely satisfactory to meet cutting conditions where everything is favorable. But with a tractor going up a hill, and where the cutting is wet or tangled, it is essential to have the tractor travel slowly and to have speed on the knife. In our design we have six speed relations which can meet every cutting condition. Also the average horse-drawn mower is not built to stand up under the strain of a tractor. The speed of the tractor in low is one and a fourth miles an hour, and a great deal of the mowing is done with the tractor in high speed, which the Ford manual gives as six and three-quarter miles an hour. Speed is valuable in cutting hay or alfalfa. Cutting hay comes when there is a great deal of other work to do. There are two other companies manufacturing a Fordson mower attachment. • • •

"Our present type mower has been changed four times. Under the name of Otwell mower we have sold about 2,000 to Ford dealers and exporters. Probably three or four hundred have been sold abroad. Taking an average over a period of fourteen to fifteen years to establish what is normal, I would say that in a normal year we expect to sell from twenty-five to fifty thousand mowers, which would be between twenty and twenty-five per cent of the normal production. • • • (R. 277, 278.)

"There has never been a year that we have not had a great number of orders on file for mowers which we were not able to fill." (R. 279.)

Mr. McKinstry said that more hay could be harvested with these cutter bar mowers, both because of the speed at which they travel and because the cutter bar is seven feet as against five feet in the case of the ordinary mower (R. 175).

Mr. Puchner, an implement dealer of Edgar, Wisconsin, testified that these cutter bar mowers had

> "not been marketed so much yet because practically everyone to whom we now sell a tractor already has a mower, but, in my judgment, in the future the mowers sold will practically all be with a draw bar connection." (R. 332.)

As to the decrease in the sales of sulky hay rakes *Mr. McKinstry* said:

> "The change in the sulky hay rake business has been very marked. The hay crop is harvested in many localities by side-delivery rakes and hay loaders instead of sulky hay rakes. The companies which entered the Harvester Company at the time of its formation made sulky steel rakes only. The side-delivery rake, which the Harvester Company now makes, was introduced some years later. All of its leading competitors make side-delivery rakes. The hay loader and the side-delivery rake as a unit have displaced both the sulky hay rake and the tedder. The side-delivery rakes the hay into a windrow and the hay loader puts it on the wagon. The tedder was made by only one company that went into the Harvester Company. The new combined rake and tedder will either rake or ted; it was introduced in 1915 or 1916." (R. 174.)

To like effect see testimony of Witten (R. 293), Sellers (R. 295, 296) and table of dealers so testifying (R. 290).

Mr. Oliver said:

> "I have a decided opinion that a good plow is far preferable to a binder as a leader for a retail implement business. The binder is a tool that is used a very short period. The first tool the farmer takes up in the spring is his plow and the last tool he uses is his plow. There are very many more hours that the farmer is with the plow when compared with half a dozen other tools on the farm. There is another feature about it: The binder is only used where they grow small grain; the plow is used wherever the soil is tilled, and I think by far it is the best tool to build around in the agricultural line. That is my judgment and always has been." (R. 252.)

Mr. Jenner, an implement dealer from Marengo, Indiana, said:

> "The tillage line is more important to any implement dealer's business than the harvester line. That is the first thing a man has to have with which to farm; he has got to have them to start, and it leads up to other stuff later." (R. 311.)

J. M. Lewis, a dealer from Huntington, West Virginia, testified:

> "The tillage line is more important to an implement dealer's business than the harvester line. It has greater variety and we sell it almost the year around, while the harvester line is seasonal. There has been a greater growth in the variety of implements composing the tillage lines than in the harvester line. Seventeen years ago, when I commenced,

the tillage line consisted of plows and disc harrows, seeding machines, and occasionally corn planters. Now there are various kinds of cultivators, tractor plows, walking plows, riding plows, spring-tooth harrows, peg-tooth harrows, and culti-packers" (R. 331.)

Other dealers from Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia and Wisconsin testified to like effect. (R. 289.) Some of these dealers came from states where crops had been diversified for years, as the dealers from Indiana, Illinois, Michigan and Wisconsin. Other dealers came from states which, until recently, had been devoted almost entirely to raising small grains, as the dealers from Minnesota, North Dakota, South Dakota and Nebraska.

* * *

Mr. Legge testified:

"The Harvester Company makes a farm tractor. We started in a small way some eighteen or nineteen years ago. Production of Ford tractors on a quantity basis commenced late in 1917 or the spring of 1918. They had been rather widely advertised and a few sold before they came into general production. The latest check we have shows about 76 concerns now making farm tractors. They are made by most of the large line manufacturers of agricultural implements. Tractors have been generally made and sold by Deere, Moline, Emerson-Brantingham, Rock Island Plow, La Crosse Plow Company, and nearly all of the threshing machine companies, J. I. Case, Rumely, and Nichols & Shepard. Practically all of these concerns started in the tractor trade prior to Ford putting out his tractor. In their advertising of last year the Ford Motor Company claimed to enjoy 78 per cent of the tractor trade. I cannot testify as to the accuracy of the figures, but unquestionably they have a very large majority of the trade. A

gentleman living close to Mr. Ford testified here yesterday that the Ford Company has 82 per cent now." (R. 204.)

Mr. Peek of the Moline Company said:

"Some of the implement manufacturers make implements especially adapted for use with the Ford tractor. We do and the Oliver Company does. Roderick Lean have been specializing in that business. Deere & Co. makes a plow especially adapted for the Fordson tractor. Not every implement is adapted to use with the Fordson. Some are too heavy; some are too light. * * *

"Fordson tractors are sold to Ford automobile dealers throughout the country. These dealers generally handle the implements advertised and designed for use in connection with the Ford tractor. Some of them do not. In that way an additional market facility is furnished for implements designed to go with the Fordson. We advertise some of our production as adapted to use with the Fordson." (R. 111, 112.)

Mr. Oliver testified:

"I feel that power farming is on the increase—in fact, I know it is. The machines manufactured by our company and especially adapted for the Fordson tractor are turned over to Ford's distributors and agencies and they dispose of them. In some places they are called distributors; in others, agencies. They are retailed through the Fordson dealers. This retail outlet for implements through the Fordson dealers has been a feature of the trade for four years; possibly five. As to its importance I think it is very good. The sales are growing." (R. 253)

Mr. McKinstry testified:

"These adapted implements are sold through the Ford dealers substantially everywhere in the United States, and this trade is increasing markedly. Deere & Co., the Oliver Co., Moline Co., Emerson Brantingham Co.—substantially all manufacturers other than the Harvester Co.—are doing this." (R. 174.)

Amongst the equipment advertised are binder and mower hitches which are designed to attach grain and corn binders and mowers to Fordson tractors (see Defendants' Exhibit (S) 8, pp. 4, 43, 76.) These hitches enable the Fordson to haul, as before stated, all the binders and mowers now on the market though the machines were primarily designed for horses.

The evidence of the dealers shows that the Ford dealers usually commence handling plows and tillage tools in connection with the Fordson tractors, and, in frequent instances, later add the harvester lines, and that their business is increasing. (R. 294, 304, 298, 312, 332, 311). To like effect is the testimony of the officers of farm organizations. (R. 337, 338, 340.)

Mr. Hoover of the Detroit Harvester Company testified:

> "The president of our company has a plan of perfecting equipment outside of the company and arranging with us to take over his patent on such items as we find adaptable to our general line. He has done considerable experimenting, built several models, one or two of which are now ready for tests. We investigated the question of whether binders could be marketed through Ford dealers by questionnaires and personal talks with distributors. They are ready to place orders when we can produce a machine that we can back up with a protective guaranty. We are convinced that our model is satisfactory, but in its present stage there is no conclusive proof. It is smaller, lighter, and stronger than the present binder and takes its power from the Fordson engine." (R. 278.)

APPENDIX TO PART VI

ANALYSIS OF THE FEDERAL TRADE COMMISSION'S COST TABLES

The following analysis shows clearly that the Federal Trade Commission's figures did not warrant the conclusion drawn that the Harvester Company had any marked or unusual advantage in costs in harvesting machines.

This analysis with more detail was given in the Harvester Company's Brief and Statement of the Case in the District Court. The Government in its brief in this Court does not mention or answer the fundamental objections to the figures here raised.

The Variation in Costs Between Competitors in Harvesting Machinery Is Not Markedly Greater than the Variations in other Implements.

As an illustration of the tremendous advantage of the Harvester Company, the Government points (Br. 76) out that in 1916 it had an advantage over its nearest competitor, Deere & Co., of $11.10 in binder costs and $3.52 in mower costs. The costs and the difference in percentage form were as follows:

	I. H. Co.	Deere & Co.	% of Deere & Co. to I. H. Co. Cost
Binder	$76.71	$87.81	114%
Mower	27.72	31.24	113%

Apparently it never occurred to the Commission before issuing its indictment of the Harvester Company to examine its own tables on implements other than harvesting machinery to see if the conditions there shown were materially different. These cost tables cover twenty two typical implements including plows, harrows, planters, drills, cultivators, spreaders, wagons, etc., as to which

competitive conditions are conceded and on many of which the Harvester costs are excelled by other companies. The following table makes a comparison:

TABLE COMPARING THE COST SOLD OF THE FIVE MANUFACTURERS HAVING THE LOWEST COST ON EACH IMPLEMENT IN 1916 AND SHOWING THE PERCENTAGES BY WHICH THE COSTS OF THE MANUFACTURERS OCCUPYING 2ND, 3RD, 4TH AND 5TH PLACE EXCEED THE COST OF THE MANUFACTURER HOLDING 1ST PLACE. (BASED ON FEDERAL TRADE COMMISSION TABLES LXLIV, PP 681-697)

Table No	Machine	1	2	3	4	5
1	Walking Plow	100	107	115	126	128
3	Sulky Plow	100	112	120	129	131
5	Gang Plow	100	102	105	105	108
7	Engine Plow	100	119	129	130	131
9	Spike Tooth Harrow	100	117	139	140	144
11	Spring Tooth Harrow	100	103	110	116	117
13	Single Disc Harrow	100	100	101	101	112
15	Double Disc Harrow	100	108	113	121	124
17	Corn Planter	100	100	101	106	108
21	Single Disc Drill	100	111	112	156	156
23	Hoe Drill	100	113	125	162	174
25	Walking Cultivator	100	110	131	133	136
27	Riding Cultivator	100	104	105	110	110
29	Mower	100	113	119	120	126
31	Dump Hay Rake	100	100	105	119	121
33	Side Delivery Rake	100	114	129	139	148
35	Hay Loader	100	108	119	119	130
37	Grain Binder	100	114	135	142	150
39	Corn Binder	100	123	131	139	188
41	Manure Spreader	100	106	125	126	127
43	Farm Wagon	100	120	123	123	130
	Average—All	100	113	123	131	141
	Harvester Implements:					
29	Mower	100	113	119	120	126
31	Dump Hay Rake	100	100	105	119	121
33	Side Delivery Rake	100	114	129	139	148
37	Grain Binder	100	114	135	142	150
39	Corn Binder	100	123	131	139	188
	Average	100	116	129	136	157

Note—In preparing the above table the lowest cost of walking plow and the two lowest walking cultivators were left out as the very small cost of these machines compared with the other machines indicates they must have been of a design so much smaller and different as not to be really competitive.

A similar computation for the year 1918 of which the details are omitted, shows the following:

	1st	2nd	3rd	4th	5th
1918—All implements	100%	112	120	128	138
1918—Harvesting machines	100%	116	126	132	151

It will be noted from the above that the spread between competitors' costs on harvesting machinery is only slightly in excess of the average spread on all implements.

If a spread of 19% on engine plows, 17% on harrows, 11% on drills and 20% on wagons is not prohibitive of competition, why is the Harvester Company's apparent advantage of 13% on mowers and 14% on grainbinders?

We say *apparent* advantage because, for the reasons stated in our brief and illustrated by the next exhibit, it seems doubtful if it really exists.

Differences in Material Costs Were Exaggerated and Not Permanent.

Examination of the tables will indicate that the greatest differences in costs are in the material item. This was accounted for by the facts testified to by Mr. Bennett, the compiler of the report:

> "The period of 1916 and 1918 was one of mounting material prices, during which there might have been considerable difference in the prices of identical materials in the hands of different manufacturers, due to the circumstance of whether they had been fortunate enough to lay in a large supply at a lower price or had to buy at a higher one. However, it is the custom in the implement industry to purchase six months ahead, so that that element is not so vital as might appear." (R. 146.)

This explains why the material costs differences were so great and indicates that they were not of a permanent nature.

But in the case of the Harvester Company there was a further difference. Mr. Bennett testified (R. 148) and the text of the Commission's report states that (R. 147-148) "in almost every instance" the *material costs* were

inflated, due to the fact that materials were valued at anticipated contract prices instead of at cost. Bennett further testified that the Harvester Company was one of the exceptions and that there might be some inflation of its competitors' costs on this account (R. 148).

A few examples concerning which Mr. Bennett was examined will illustrate the exaggerated difference in materials which there is every reason to believe existed only in part and were non-permanent in character.

Example 1—Mr. Bennett testified:

> "Referring to Table XXIX (1916 mower costs) on page 692 (Pet. Ex. (8) 90) the International Harvester Company had the lowest revised total cost, $27.72, and the next lowest was number four, $31.24, giving the Harvester Company an advantage of $3.52. In column two, showing the material costs as revised by the commission, the cost for the International Harvester was $13.77 and for number four was $18.71, a difference of $4.94
>
> "The difference in the raw material costs, therefore, was more than the difference in the total manufactured cost, which would indicate that in so far as factory production and productive labor was concerned, number four was in as good a position as the International." (R. 146.)

Example 2—*Page* 695—*Table* XXXVII—1916 *Binder Costs.* The Harvester Company (No. 1) ranks first with a revised delivered cost of $76.71 as against $87.81 for the manufacturer shown as No. 2 who can be identified by the key as a manufacturer now doing business. The difference in favor of the Harvester Co. is $11.10. The revised material costs show an advantage in favor of the Harvester Co. of $12.57, the difference between $35.10 against $47.67. In other words, the Harvester Company's competitor had an apparently large advantage in labor and selling expense and if the difference in material

cost did not actually exist or was of a fluctuating character (as the evidence showed) the Harvester Company would lose its rank as the lowest manufacturer.

The Temporary Nature of the Relative Ranking in Costs of Each Company. The five companies having the lowest costs, that is holding the lowest five rankings in the 22 cost tables for the year 1916, were identified by the keys (Pets. Ex. (S) 91 R. 493 and Defts. Ex. (S) 25 R. 607) and each company's ranking in 1916 was then compared to its ranking in the corresponding 1918 cost tables for the same implement. The total number of cost figures in each of the two years so compared was 108; that is five cost figures on each of the 22 implements except cotton planters for which only three figures appear in the table. As a result of this comparison it was found that only 43 out of a possible 108 companies held the same rank in 1918 as in 1916. In the other 65 cases the company's rank had changed either up or down.

The Different Relative Position of Each Company on certain Implements as Compared with Other Implements of its own Manufacture. A company occupying first rank in a particular year on plows, might in the same year hold third place on binders and fifth place on cultivators. To reflect this important feature, that no one company excels in everything, a computation was made to find how many different companies ranked first or had lowest cost on one or more of the twenty implements and how many second rank, third rank, etc. This computation showed the following:

	1916	1918
Number of companies holding first place or lowest costs on one or more of the 22 implements	10	10
Number holding second place	10	11
Number holding third place	9	12
Number holding fourth place	12	11
Number holding fifth place	11	15

This showing is rather significant considering that the admitted inflation of all manufacturers' material costs, except the Harvester Company's, might easily have given the Harvester Company a fictitious first rank on everything it made.

Whatever the causes of the difference in costs this shows clearly they cannot be assumed to be of a permanent nature affecting ability to compete.

1. ANSWER TO THE CRITICISM OF THE COMPANY'S ACCOUNTING METHODS

(1) The Government says that in stating its net income for the years 1917 and 1918 the Company improperly deducted a reserve for collection expense of $1,000,000 in 1917 and $2,000,000 in 1918, which charges were excessive for the purpose (Br. 55). This information is alleged to be found in the 1918 and 1917 published annual reports which have been filed with the Court under stipulation (R. 640) that either party might refer to the same in argument. Reference to these reports will show that no reserve whatever for collection expense was deducted from income or set up in 1918 and only $100,000 in 1917. The Government's mistake is apparently due to confusing the income accounts with the balance sheet figures. The balance sheet for 1918 shows a balance in the collection expense reserve of $2,000,000, but this represented the result of small annual additions over a period of years, and, the reports show that only $100,000, not $3,000,000, was added to the reserve during the two years in question. As to the purpose and propriety of this reserve see 1918 Annual Report, page 11.

(2) The Government charges say (Br. 63, App. 165) that the annual deduction for ore and timber extinguish-

ment (which in 1918 amounted to $447,631.93) was improper in greater part and in so far as it applied to the ore mines, because the Company did not own its iron mines but only leased them. Only the lessor is entitled to such a deduction, it is said. This is an extraordinary assertion. How else can the cost of the lease be extinguished? It appears from Mr. Reay's testimony that the purpose of the depletion item was to extinguish the capital value of the mine leases, and that the amortization calculations were based on actual cost of the properties to the company (R. 237).

(3) *The Basic Inventory Controversy.* During the war and post-war period of inflated prices, 1917-1920, the Harvester Company publicly announced that it was using for its own bookkeeping purposes what is known as the basic inventory, which simply accomplished in another and perhaps more logical way the same purpose as the inventory reserves, generally set up by all wisely-handled businesses, to provide against the expected deflation. It has claimed no advantage in this suit by reason of this method. It obviously could not object to an adjustment of the inventories of all companies to the same basis for purposes of comparison. It appears from the Commission's report (p. 112) that the Harvester Company and Deere & Co. were found to be the only implement companies using the basic inventory principle, and that for purposes of comparison the Commission adjusted their inventories to the cost-or-market basis. Mr. Bennett, who prepared the Federal Trade Commission data, testified that the Company had available accurate information to enable him to make the adjustment and that there was not the slightest attempt at concealment (R. 143). The Harvester Company has no quarrel with the Federal Trade Commission for adjusting its basic inventory to the cost-or-market basis

for purposes of comparison with the other implement companies using that plan. It does, however, feel that it has a just complaint in that the Commission, after making this adjustment, vitiated the whole comparison in so far as the costs of machines were concerned in the manner hereinbefore mentioned; that is, by valuing competitors' materials not at cost or market, but at current or anticipated contract prices on a rising market.

The whole question of the basic inventory so far as the Commission's figures were concerned, was removed by its own adjustment and none of the exhibits filed by the Harvester Company in this case have attempted to take any advantage of this principle. The nature of the basic inventory method, its propriety as a matter of good accounting and the justification for its use under the particular circumstances, are all utterly immaterial to any question of substance in this case, but the Government has now made the issue important by a charge of deceptive accounting.

The Government's attack on the basic inventory method is based on a complete misunderstanding of what was done. It says (Br. 156) "the Company has omitted from its inventories a large quantity of machines and other physical units and has valued the property included in its inventory on an arbitrary basis below cost or market, and has in this way understated its earnings." This same charge is repeated in several places (Br. 158, 160, 161).

The evidence shows that the Harvester Company valued its normal inventory on a fixed basis representing normal pre-war values, and valued the excess quantities at cost or market. The Government has mistakenly assumed that this excess was omitted entirely. If the author of this mistake had taken the slightest

trouble to examine the record to see what was done or to examine the text books to see what the basic inventory method was, instead of asserting that it was a principle unknown to accounting, this mistake would not have been made and the Harvester Company would not be publicly charged with crookedness by the Department of Justice.

Bennett, the Government's own witness, and director of the Federal Trade Commission investigation, described the inventory method of the Harvester Company as follows:

> "There was a difference between the company's and the commission's figures in respect to inventories of raw materials and finished product, because commencing with the year 1917 the International Harvester Company priced their inventories on what they were pleased to call the basic inventory principle. That principle was this: It was the contention of the Harvester Company that they should not be compelled to price their inventory at cost or market, whichever was the lowest, but on a pre-war normal basis, as far as quantities and values were concerned, equivalent to the inventory they had on hand at that time; *the balance of the inventory to be priced at current cost*" (R. 139).

In the 1918 published Annual Report of the Harvester Company (p. 8) under the heading "Inventories" it is said:

> "The 'basic' inventory representing a normal quantity of raw materials, work in process, and finished products has been valued at 1916 inventory prices (being the actual cost of that year), which were adopted in 1917 as a fair and stable basis for inventory valuations during the period of the war. *The 'excess' inventory (that is, the quantity in excess of normal) has been valued at reasonable market prices.*"

It thus clearly appears that the excess machines above

normal quantities were not omitted from the inventory, but included at market prices. The Government's whole charge is based on a misapprehension.

The basic inventory plan was recognized in sound accounting practice.

R. H. Montgomery, formerly President of the American Association of Accountants and a recognized authority, in his work on Auditing Theory and Practice, Vol. I, 3rd Ed. 1922, says:

> "The selection of a low, fixed base price for raw materials is a practice which was adopted many years ago by some of the most successful and far-seeing business men. There must be some direct connection between good business practice and good accounting practice" (p. 124).
>
> "When market prices and costs of production have increased continuously due to inflation such as that caused by war, the experience of hundreds of years emphasizes the dangers of considering such inflated prices to be normal. In spite of inflation due to wars, prices usually return to pre-war levels, and it is reasonable to assume that they always will. It was said that the recent World War was different from all others, and that therefore prices would continue permanently on a higher level. Yet in 1921 the prices of some important basic commodities were as low or lower than in 1914 (p. 124).
>
> "Some corporation officials thought that the continued rise in prices during the war was a temporary phenomenon, and so took such steps as were necessary to prevent a serious impairment of earning power in the event of a return to lower prices during succeeding years. Thus, the United States Steel Corporation established a reserve during the years 1916 to 1920, which at the close of 1920 amounted to $95,000,000 on an inventory of $353,000,000. This reserve was established to offset the excess of actual cost or market value of inventory stocks over and above the unit prices therefor as at the close of the year 1915. *Some corporations carried quantities equal to the war quantities at pre-*

war cost, and increases in quantities at actual cost (p. 125).

"At the beginning of the late war it was believed that the adoption of the base or fixed price method would prevent subsequent financial troubles, should prices unduly increase. Many concerns adopted it and those which adhered to it now consider that their judgment has been vindicated. The Treasury Department refused to sanction the practice in so far as the computation of income and profits taxes is concerned. Who is right is a question to be settled by the courts.

In the opinion of the author, the method was adopted by enough concerns to justify calling it good accounting practice" (p. 126).

In T. J. Millar's Monograph on "Manufacturing and Trading Stock Valuations" (Macdonald & Evans, London) the literature on various inventory methods is collected, including references to and quotations from English and French Governmental papers and opinions of committees of accountants, giving special consideration to inventory methods during the war period of inflation and deflation. It appears that the basic inventory method was in general use in England prior to the war, and a committee of accountants recommended its acceptance for purposes of excess profits tax, but that owing to the exigencies of the Government the latter decided to permit its use only in businesses where it had been a general practice of long standing. Special relief in another form was provided for concerns held to the cost or market method of valuation (English White Papers, June 14, 1917).

Mr. Millar states:

"These documents recognize the practice of basic stock valuation and admits its applicability in certain circumstances" (p. 5).

He further says:

"As regards the French Finance law it is perhaps

> sufficient to indicate that it distinguishes normal and excess stock. It provides for normal stock being valued on a pre-war average basis" (p. 6).

Thus the inventory method which the Government says was unknown to accountants was expressly approved by the French tax law, was accepted in certain cases under the English tax law, and had been long recognized and used for purposes of business accounting.

At the close of the year 1921 the Harvester Company discontinued the basic inventory plan and the Annual Report states (p. 7):

> "The rapid decline in market values during the year 1921 of the commodities entering into the Company's products has resulted in price levels that make unnecessary the continuation of the 'basic' inventory method of valuing inventories, therefore, raw materials and supplies, including purchases after the close of the manufacturing season, have been valued at cost or market, whichever was lower."

The report also contains a paragraph (p. 13) summarizing the reasons for use of the basic principle during the five years of rise and fall in prices and the results thereby accomplished.

In order that the Court might fully understand the effect of the different inventory methods, defendants introduced an exhibit (Defts.' Ex. (S) 21) showing the profits computed in both ways as follows:

	Profits per Cost or Market	Profits per Basic Inv.
1917	$20,416,710	$14,999,593
1918	20,306,713	14,985,325
1919	16,408,239	12,608,726
1920	19,853,394	16,655,353
1921	*14,576,141 (Loss)*	4,149,918
	$62,408,915	$62,408,915

It will be noted (and this is true of all differences in

inventory methods) that the total profits over a period of years are not changed but only the allocation between years. The relation of the earnings to the investment is the same in either case, so that the matter is really immaterial to the Government's own argument that the Harvester Company's return is excessive. What better justification could there be for the use of the basic inventory than the results shown above?

COMMENT ON THE FEDERAL TRADE COMMISSION'S FIGURES RELATING TO PROFITS.

The six tables on pages 90-95 of the Commission's report show the investment and earnings of all companies investigated and the figures in the first three columns to which the Government refers purport to show the investment, earnings and per cent of earnings to investment for the *implement business* only as distinguished from the figures in the last three columns covering the *entire businesses* of the respective companies. Relying on these figures the Government states that the Harvester Company's per cent of earnings to investment as compared with the average for other companies, shows an excessive profit. The figures relied on are as follows (Commission Report, pp. 102-3):

	I. H. Co.	21 Other Companies
1913	10.67%	8.62%
1914	7.60	4.97
1915	7.84	5.19
1916	10.62	8.31
1917	18.59	13.43
1918	19.59	20.34
Average	12.48%	10.07%

None of these figures, it should be noted, *reflect net earnings but simply operating income* before deducting

interest on borrowed capital, Federal Income and War Taxes and other usual and necessary provisions (F. T. C. Rep., p. 97). The net income for the Harvester Company and all other companies would, of course, be considerably lower. This may not vitiate comparisons but does have a bearing on whether the profits of all the companies were adequate, inadequate or excessive.

Comparing the rates of return as given by the Commission, we are unable to see how any dominance is shown by the small excess of the Harvester Company over the average. It should be remembered that the average return includes the inefficient as well as the efficient. It appears from the Commission's own tables that in every year a number of companies exceeded the Harvester Company in the rate of return, as follows: in 1913, 5 companies; 1914, 9 companies; 1915, 7 companies; 1916, 7 companies; 1917, 5 companies; 1918, 10 companies (Commission's Rep., pp. 90-95).

However, the Commission's figures are not in fact comparable because, although purporting to compare the return on implement business only, the Harvester Company's figures include the profits on its steel, lumber and fiber industries. This is admitted on page 97 of the Commission's report which justifies it on the ground it would only make a slight difference. This action seems extraordinary in the face of the Commission's own conclusions in Chapter X, adopted in the Supplemental Petition, that the steel business is a separate, disconnected business which the Harvester Company does not need, and which returned profit considerably greater than the implement business.

In Chapter X (pp. 671-2) of the Commission's own report where the steel business is attacked as a separate business so profitable that it must be taken away from

the owners of the Harvester implement factories, will be found the figures necessary to revise the Company's investment and earnings in the implement business which the tables on pages 90-95 purport to show but do not in fact show. Deducting the steel, lumber and fiber investments and earnings as shown by the Commission itself (pp. 671-2), the following revised figures are arrived at, more correctly comparing the earnings of the Harvester Company and the average for the implement industry:

	I. H. Co.	21 Other Companies
1913	9.84%	8.62%
1914	7.99	4.97
1915	7.14	5.19
1916	7.85	8.31
1917	13.94	13.43
1918	16.75	20.34
Average	10.50%	10.03%

By comparing this table with the preceding one it will be seen that the Harvester Company's excess of earnings above the average for all other companies is reduced from 2.45% to .47 of 1%. In other words four-fifths of the excess giving the alleged dominance disappears with the making of a correction necessary to put the tables on a comparative basis. If the Commission and the Government are correct in attaching great significance to an excess of 2.45% above the average, then the inclusion of the steel business, etc., causing more than four-fifths of the excess, made more than a slight difference, or *vice versa*.

Using the above revised figures as more correctly reflecting the separate results of the Harvester Company's implement business, and comparing these results with the returns of other companies covered by the Commis-

sion's investigation, a still larger number of companies appear to have made larger returns than the Harvester Company, as follows:

NUMBER OF COMPETITORS WITH GREATER PERCENTAGE OF RETURN THAN INTERNATIONAL HARVESTER COMPANY.

	Commission's Figures including Steel Profits, etc.	Revised Figures excluding Steel Profits, etc.
1913	5	6
1914	9	9
1915	7	7
1916	7	15
1917	5	12
1918	10	11
Total	43	60

Regarding the reasonableness of the return of the whole implement business, the Commission's report says (p. 102):

> "While, as stated above, the last two years of the period under investigation showed an excessive rate of return, nevertheless, when the whole of the six-year period is taken into consideration, it would appear that the average return for the whole industry was little, if any, above what might be considered a normal return."

If this is true of the whole industry, it would seem to follow of the Harvester Company also.

STEEL PROFITS

The following table (Defendants' Exhibit (S) 36, R. 638) identified by W. M. Reay, Comptroller, shows the amount of steel profit per machine; or, in other words, the amount by which the costs of each machine would be reduced if the steel from the Wisconsin Steel Works were

taken into machine costs at cost instead of at market price.

STEEL REQUIREMENTS
AND
WISCONSIN STEEL WORKS PROFIT
PER
BINDER—MOWER—RAKE—CORN BINDER
1923

	6 Ft. Binder w/ Bundle Carrier	5 Ft. Mower	10/26 Rake	Regular Corn Binder w/ Bundle Carrier
Weight of Steel Requirements				
Rolled by Wisconsin Steel Works	6139	1809	3319	4349
Purchased from Outside Concerns	116	25	11	110
Total	7289	2856	3429	4459
Wisconsin Steel Works Net Profit on Steel shipped to Harvester Works per Machine	$3 00	$1 00	$1 41	$2 12

Reay further testified that the average profit per ton of steel over a period of 15 years was about $10 per ton and as something over 600 pounds of Wisconsin Steel Works' steel was used in a binder, $3.00 would represent the average steel profit per binder. (Rec., 368.) For the years 1921 and 1922 there was no steel profit whatever. During these years the market price of steel at which it was billed to the Harvester Works was below cost of production. (Rec., 223.) In other words, in the very period of depression, 1921 and 1922, during which the petition alleges that the profitable steel business gave the Harvester Company an undue advantage, it would have been better off and have had lower costs if it had not owned a steel plant and had bought on the outside.

Reay testified that the average profits of the steel

properties over a period of 15 years were approximately $3,300,000 per annum. (Rec., 368.) This included the profit on sales to outside customers and also the intercompany profit on steel billed to the Harvester Company machine works at market.

The Harvester Company's investment in the steel business which yielded the above return as shown by the books of the Company appears from Petitioner's Exhibit (8) 139 (R. 567), as follows:

1913-18	$24,000,000
1919	$25,000,000
1920	$29,000,000
1921-22	$32,000,000

This figure the exhibit states includes $5,000,000 assigned to the steel business as a minimum working capital; that is, if the steel business were an independent enterprise separately financed, it would require this amount of capital to carry on in addition to its physical properties.

APPENDIX TO PART VIII

STATEMENT SHOWING RATIO OF 1919 SALES OF CHAMPION AND OSBORNE MACHINES TO SALES OF ALL HARVESTING MACHINES

Petitioner's Exhibit (81 10 R 46) shows that Emerson-Brantingham in 1919 sold

Osborne machines	9,400
Emerson rakes and Standard mowers	10,955
Total sales	20,364

Avery & Sons' sales of Champion machines in 1919 cannot be figured accurately as the Government only introduced their combined sales for 1919 and 1920, 8,847 (Gov. Br. 148). It is a fair assumption that at least one-third of these sales, or 2,949 were made in 1919, and the following table is prepared on this assumption:

Osborne sales in 1919	9,400
Champion sales in 1919	2,949
Total number of machines sold in U. S. in 1919 (Gov. Br. 146)	12,358
Add estimated Champion sales	382,685
	2,949
Per cent of Champion and Osborne sales to total sales	385,634 3.15%

TABULATION SHOWING SALES IN THE UNITED STATES OF GRAIN BINDERS IN 1904 AS PROVED IN ORIGINAL HEARING IN THIS SUIT

Harvester Company	(9 R Vol I. 728)	86,254
Acme Company	(9 R Vol II, 1139)	1,000
Johnston Company	(9 R Vol I. 537)	818
Wood Company	(9 R Vol I. 516)	783
Adriance-Platt Company	(9 R Vol I. 554)	615
Minnie Harvester Company	(9 R Vol II 1287)	1,500
Total		91,070
Harvester Company's percentage		94.6

STATEMENT SHOWING COMPUTATION OF THE SUMMARY TABLE APPEARING IN APPELLEE'S BRIEF COMPARING THE INTERNATIONAL HARVESTER COMPANY'S AGRICULTURAL IMPLEMENT SALES IN THE UNITED STATES IN 1922 WITH THE TOTAL SALES OF AGRICULTURAL IMPLEMENTS IN THE UNITED STATES AS SHOWN BY THE UNITED STATES CENSUS FIGURES AFTER ELIMINATING FROM SAID TOTAL THE AMOUNT OF SALES OF ALL TYPES OF FARM IMPLEMENTS WHICH THE HARVESTER COMPANY DOES NOT SELL.

	All Manufacturers	International Harvester Company	Percentage IHC to All Manufacturers
Planting Machinery	$ 4,567,000	$ 1,149,000	25.2%
Plows and Tillage Implements:			
Plows and Listers	9,283,000	684,000	
Tillage Implements	5,362,000	1,457,000	
Cultivators	4,705,000	1,446,000	
Total of above 3 classifications	$ 19,200,000	$ 3,587,000	18.6
Harvesting Machinery:			
Harvesting Machinery	$ 9,886,000	$ 6,001,000	
Haying Machinery	8,027,000	4,055,000	
Total of above 2 classifications	$ 17,913,000	$10,056,000	56.1
Machines for Preparing Crops for Market or Use	$ 14,877,000	$ 2,094,000	14.1
Gas and Steam Tractors	41,838,000	9,292,000	22.1
Miscellaneous	49,938,000	16,974,000	34.0
Grand Total	$148,423,000	$43,122,000	29 %

The above table is compiled from U. S. Census figures (Defendant's Exhibit S-19 and 34 R. 600, 636), and the testimony R. 230 enumerating the several kinds of implements and equipment included in the census, but not sold by the Harvester Company.

The amount of sales shown in the Census under the classification listed below have been excluded as representing machines not sold by the Harvester Company:

Census Classifications excluded: TABLE No. 2: Transplanters, horsedrawn, Other planters or drills. TABLE

No. 3: Plowstocks. TABLE No. 4: Weeders, Other tillage implements. TABLE No. 5: Hand cultivators (wheeled hoes), Other cultivators. TABLE No. 6: Pea and bean harvesters, Other harvesting machinery. TABLE No. 7: Other haying machinery. TABLE No. 8: Grain cleaners and graders (for small grain only), Other machines for preparing crops for market or use. TABLE No. 9: Tracklaying (caterpillar) type (all sizes) Garden type, Steam tractors complete. TABLE No. 11: Light spring vehicles, Buggies. TABLE No. 12: All Barn and Barnyard equipment. TABLE No. 13: Beekeepers Supplies, Milking machine units, Butter-making equipment, Cheese-making equipment, Farm elevators (portable), Farm elevators (stationary) Forks, hoes, rakes and shovels, Grain cradles and scythes, Scythe snaths, Lightning rods, Portable corneribs, Portable grain bins, Incubators, Brooders, other Pumps hand, only hand or windmill, Push carts and trucks, Seed-potato cutters, Silos, Stump puller (power) Tank heaters, Water supply systems (farm and house), Wheelbarrows, Windmills, Windmill towers. All other not elsewhere specified.

The "Miscellaneous" item includes all machines made by the Harvester Company which are grouped in the census classification as "Miscellaneous" (cream separators, manure spreaders, engines, cane mills, etc.), also wagons, and repairs, attachments and parts for all machines in all of the census classifications. Wherever the census groups in one total the amount of the sales of attachments, repairs and parts for certain types of machines sold, and others not sold, by the International Harvester Company, the amount so shown has been prorated in proportion to the amount of machine sales included and excluded in preparing the table, as above stated.

DETAILS OF COMPUTATION OF INTERNATIONAL HARVESTER COMPANY'S PERCENTAGE OF TRADE IN HARVESTING MACHINES BASED ON THE 1922 U. S. CENSUS FIGURES FOR THE TOTAL UNITED STATES SALES IN DOLLARS.

The following is the detail of the tabulation in our Brief showing the Harvester Company's percentage of trade as 56.1% in 1922:

	All Manufacturers	I. H. Co.	
Grain Binders	$ 4,752,129		
Grain Headers	596,172		
Harvester Threshers	1,827,373		
Corn Binders and Harvesters	1,576,499	$ 6,001,000	
Reapers	42,002		
Potato Diggers	1,105,273		
Beet Lifters	26,879		
Mowers	4,399,946		
Sulky Rakes	975,919		
Side Delivery Rakes	500,424		
Sweep Rakes	380,463	4,055,000	
Tedders	339,184		
Loaders	1,183,932		
Stackers	257,529		
	$17,913,524	$10,056,000	56.1%
Excluded:			
Other Harvesting Machinery	331,839		
Other Haying Machinery	43,694		
	$18,289,057	$10,056,000	55.0%

In preparing the above tabulation, the total U. S. sales under the following census classifications have been omitted: "Pea and Bean Harvesters," "Other Harvesting Machinery," "Attachments and Parts," "Other Haying Machinery," "Attachments and Parts."

Pea and bean harvesters are excluded because not made by the Harvester Company. The Harvester Company makes a number of machines included in the classifications "other harvesting machinery" and "other haying machinery" (corn pickers, rice binders and combined sweep rakes and stackers) but inasmuch as these classifications also include other types of machines not made by the Harvester Company and no separation can be made, the entire classifications have been excluded. At the same time the Harvester Company's figures for total sales in all kinds of harvesting and haying machinery include its own sales of corn pickers, rice binders and combined sweep rakes and stackers. This operates to increase the Harvester Company's percentage. It will be noted that inclusion in the total U. S. sales of these omitted classifications would reduce the percentage to 55%.

The figures for the Harvester Company's sales are taken from Defendant's Exhibit (S) 19 (R 600) showing the Harvester Company's sales as reported to the Census Bureau.

Attachments and parts are not included in the computation as the figures for a comparison are not in the record. Their inclusion would not materially change the result.

It should be noted that the census basis of valuation for machines sold is not the ultimate sales proceeds but the same factory value which is used for valuation of the manufacturing output of the year; for example, in 1922 the total number of rakes manufactured is shown as 30,019 valued at $736,791.00, or $24.75 per rake. In the same year the domestic rake sales are shown as 41,816, valued at $975,019.00, or $23.32 per rake. The small difference reflects the variations in the relation of the number manufactured and sold by each manufacturer, also differences in types and sizes of machines, also the higher factory value of machines packed for export.

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